

FILED**02-13-2019****Clerk of Circuit Court****Outagamie County****2013CF001074**

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

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3 **STATE OF WISCONSIN,**4 v. Plaintiff,
Case No. 13-CF-10745 **CHONG LEN LEE,**

6 Defendant.

7 **JURY TRIAL - DAY FIVE**8
9 BEFORE: **HONORABLE GREGORY B. GILL, JR.**
10 Circuit Court Judge, Branch IV
11 Outagamie County Justice Center
Appleton, WI 5491112 DATE: **March 1, 2016**
1314 APPEARANCES: **CARRIE SCHNEIDER**
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Assistant District Attorneys
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Attorneys at Law
19 Appearing on behalf of the Defendant20 **CHONG LEN LEE**
Defendant
21 Appearing in person22
23
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Outagamie County

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TRANSCRIPT OF PROCEEDINGS

2 THE COURT: We're on the record in *State of*
3 *Wisconsin v. Chong Lee.*

4 Mr. Lee appears in person, along with his
5 counsel, Attorney Evan Weitz and Attorney Deja
6 Vishny. Also appearing at counsel table under the
7 student practice rule is Mr. Solomon Gatton.
8 Representing the State of Wisconsin, Outagamie County
9 District Attorney Carrie Schneider. Also
10 representing the State are Assistant District
11 Attorneys Andrew Maier and Alex Duros.

12 We are prepared for a continuation of testimony
13 from yesterday.

14 Mr. -- Mr. Paul Lee, you were sworn in
15 yesterday, you are still under oath, sir, and so all
16 of those obligations and expectations remain.

17 Anything we need to address before the jury
18 comes in, Attorney Schneider?

19 ATTORNEY SCHNEIDER: No, Judge.

20 THE COURT: Okay. Attorney Vishny?

21 ATTORNEY VISHNY: No.

22 THE COURT: All right. Can we please bring
23 in the jury.

24 THE COURT: Please rise.

25 (The jury was escorted into the courtroom.)

1 THE COURT: Good morning, everyone. Please
2 be seated.

3 And we are now resuming with Mr. Lee's
4 testimony.

5 If I recall correctly, Attorney Vishny, we had
6 concluded the direct examination and we are now ready
7 for your cross-examination.

8 ATTORNEY VISHNY: Thank you, Your Honor.

9 **EXAMINATION OF PAUR LEE**

10 **BY ATTORNEY VISHNY:**

11 Q Mr. Lee, yesterday you claimed that you had a loss of
12 memory, right?

13 A Not a loss of memory but not a lot that I could
14 remember.

15 Q There were a lot of times when you were being asked
16 questions by the prosecutor about what you said and
17 you kept saying you couldn't remember, right?

18 A Yes.

19 Q And you claimed you couldn't remember what you told
20 the police when they questioned you at the Appleton
21 Police Department?

22 A Yes.

23 Q You claimed you couldn't remember that you had told
24 them that it was your brother Chong who you said had
25 killed Joshua Richards?

1 A Yes.

2 Q But you remembered everything about the fight,
3 right?

4 A Not entirely.

5 Q Well, you remembered that you had gone down to the
6 bathroom.

7 A Yes.

8 Q You remembered that there was something going on
9 between Joshua and Phong.

10 A Yes.

11 Q You remembered that you punched him with your right
12 hand.

13 A Yes.

14 Q You remembered it was a punch to the jaw.

15 A Yes.

16 Q You remembered that you had a particular e-cigarette
17 in your hand.

18 A Yes.

19 Q You remembered and claimed that it was the same one
20 you had at the police department.

21 A Yes, that was.

22 Q You remembered what coat you had on.

23 A Yes.

24 Q But you claim you couldn't remember what you told the
25 police.

1 A No, not really, not entirely.

2 Q You had a selective memory yesterday, right?

3 A Yes.

4 Q You remember each and every word that you told the
5 police, or maybe not each and every word, but you
6 remember telling them that Chong was the killer. You
7 really do remember that, don't you, Mr. Lee?

8 A Not entirely.

9 Q Well, you just don't want to have to come here in
10 court and testify, wasn't that the case?

11 A Yes.

12 Q Because you know that when you told them that your
13 brother Chong was the shooter that you were lying.

14 A What do you mean by that?

15 Q I think it's pretty clear. You know that you lied
16 when you said that Chong was the shooter.

17 A I don't know about that, but before that he forced me
18 to say it was Chong when I said no, it wasn't.

19 Q Oh, so the police forced you to say it was Chong?

20 A Yes.

21 Q Well, let's see. Did they hold a gun to your head
22 and tell you you had to say it was Chong?

23 A No, but they kept screaming at me; and at the time I
24 was on -- I ain't gonna lie, I was on drugs yet.

25 Q So they didn't hold a gun to your head, did they?

1 A No.

2 Q And they didn't beat you up and force you to say it
3 was Chong?

4 A No.

5 Q And they didn't deprive you of food to make you say
6 it was Chong?

7 A No.

8 Q They didn't starve you and not give you water,
9 right?

10 A No.

11 Q They didn't let you not go to the bathroom in order
12 to say it was Chong.

13 A No.

14 Q Right? What they did do was to make it pretty clear
15 to you that if you didn't say that it was Chong that
16 you were going to be brought to justice for this
17 killing.

18 A For what? I didn't do it so why would I.

19 Q And then you lied and said it was Chong because you
20 didn't want to be prosecuted for it. Okay?

21 I'm going to talk --

22 ATTORNEY SCHNEIDER: Well, I'm going to ask
23 that she allow him to answer.

24 ATTORNEY VISHNY: I'm sorry.

25 ATTORNEY SCHNEIDER: Then I'm going to

1 object to the comments if they're not questions.

2 THE COURT: Understand. Did you understand
3 the question, Mr. Lee?

4 THE WITNESS: What was the question?

5 ATTORNEY VISHNY: I'll withdraw that.

6 Okay?

7 THE COURT: That will be fine.

8 ATTORNEY SCHNEIDER: Well, and I'd ask that
9 her entire comment --

10 THE COURT: It will be ordered that it be
11 stricken from the record.

12 ATTORNEY SCHNEIDER: Thank you.

13 Q (BY ATTORNEY VISHNY) Now I'm going to talk to you
14 about your story about what happened in Luna.

15 A Okay.

16 Q You told the police that you were punched from behind
17 and then the guy was in front of you and you punched
18 him, right?

19 A Not that I can remember. I told you that.

20 Q Well, actually, yesterday in court you said you were
21 punched from behind and then you turned around and
22 punched a guy. Do you remember saying that
23 yesterday?

24 A No.

25 Q Okay. I'm going to play a part -- now you were

1 interrogated by the police a couple of times in
2 connection with this case, right?

3 A Maybe once or twice.

4 Q The first time the police came to talk to you it was
5 at your job?

6 A Yes.

7 Q You were working at Norka, right?

8 A Yes.

9 Q And they came in and they talked to you and said --
10 your employers gave a small room where they could
11 talk to you privately, right?

12 A Yes.

13 Q Came in and they questioned you, right?

14 A Yes.

15 Q And that was Sergeant Thao who is sitting in the
16 courtroom today, right?

17 A Yes.

18 Q And Sergeant Rabas, if you remember, who is sitting
19 right here at counsel table. Do you remember him?

20 A Yes.

21 Q Okay. So as far as what you said about not
22 remembering about being punched from behind, I'm
23 going to play part of your statement at 1:17,
24 beginning at 1:17, Line 939.

25 THE COURT: Mr. Gatton, are we playing

1 video, sir?

2 MR. GATTON: We are.

3 ATTORNEY VISHNY: There is video, not
4 really quality, doesn't show much.

5 THE COURT: It may help then to dim the
6 lights. And again, members of the jury, if there is
7 any trouble, just let me know.

8 ATTORNEY VISHNY: I'm ready.

9 (Video played.)

10 ATTORNEY VISHNY: Stop.

11 ATTORNEY SCHNEIDER: And just for the
12 record we played it from 1:17:00 to 1:18:20.

13 ATTORNEY VISHNY: Okay.

14 Q (BY ATTORNEY VISHNY) Okay. So today you claim that
15 you hit him on the chin, right?

16 A Yes.

17 Q All right. But going back to what you told the
18 police, and I'm not going to play every single thing
19 because it's just too much, I'm going to show you the
20 transcript for this one instead, Page 43, Line 9.
21 I'm going to show you a transcript of your
22 interrogation by the police.

23 Sergeant Rabas said: Okay, it's very possible
24 you could have punched that guy.

25 And you said: I don't know but I know I punched

1 somebody, I know that.

2 Right?

3 A Yes.

4 Q And then he said: Okay, do you remember like where
5 you kind of hit him?

6 And you said: Nope.

7 Do you remember that?

8 A Whatever is on the transcript, but I don't remember
9 saying that.

10 Q Okay. So on the 11th of December, just three days
11 after this happens, you say you don't remember where
12 you hit him, right?

13 A I guess if that's what the transcript said.

14 Q Okay. Now -- so you say, whether it's punched, a
15 jab, but you punched somebody and you're looking
16 right at the guy, right?

17 A Yup.

18 Q You don't punch somebody without looking at them.

19 A Yup.

20 Q And what happens when you punch somebody, what does
21 any person with common sense know is gonna happen
22 when you throw a punch?

23 A When you punch them? You just punch them.

24 Q Well somebody who you punch might punch you back,
25 right?

1 A Yeah.

2 Q And this guy is a lot taller than you?

3 A Yeah.

4 Q So you're going to watch for what the tall man is
5 going to do, right?

6 A Um-hum.

7 Q You're not an idiot, you're not going to punch a guy,
8 throw a punch and then turn your back on it --

9 A No.

10 Q -- so somebody can beat the crap out of you, right?

11 A No.

12 Q You're going to be looking at the guy, right?

13 A Yup.

14 Q And you're saying you're looking right at him and you
15 don't see who comes up and shoots him. That's what
16 you told the police?

17 A I don't know. I didn't see nobody shot him.

18 Q Yeah, because you're the one who did it. You weren't
19 looking at yourself, were you?

20 A Yeah, whatever. That's what you think.

21 ATTORNEY VISHNY: 51:36 on the tape.

22 Q (BY ATTORNEY VISHNY) So you're not going to look --
23 you're not going to see somebody, but you're looking
24 at a bigger guy because you're a short guy, right?

25 A Yeah.

1 Q What's your height?

2 A Five two, five three.

3 Q So you're five two, five three. What was about the
4 height of this gentleman who you punched?

5 A Like I said, I don't remember the fucking height of
6 his height. All right?

7 Q You don't remember the what?

8 A I don't know how high he -- tall he was.

9 Q But he was a lot taller than you, right?

10 A Not by much.

11 Q Oh, I see. So there wasn't a big difference between
12 you and him, right?

13 Do you remember the police -- was there a
14 difference between you and him?

15 A I don't know.

16 Q You remember the police telling you he was a really
17 big guy?

18 A Not that I remember seeing. I don't know.

19 Q Oh, yeah. So he's a big guy, and you're not afraid
20 of a big guy, are you?

21 A Not really.

22 Q No. Because you're tough, right?

23 A I'm not tough.

24 Q All right. Let's see what you said to the police.

25 MR. GATTON: Your Honor, lights. Thank

1 you.

2 (Video played.)

3 ATTORNEY VISHNY: Stop.

4 Q (BY ATTORNEY VISHNY) That's what you told the
5 police. You're a tough guy, you're not scared of a
6 bigger guy than you, are you?

7 A I'm not scared of, fucking, a big dude or not, but I
8 ain't no tough guy like I said.

9 Q A gun is a great equalizer, isn't it?

10 A No. I don't have no gun.

11 ATTORNEY SCHNEIDER: I would ask that she
12 let the witness finish answering the question before
13 she begins.

14 ATTORNEY VISHNY: Okay. Let's read it
15 back.

16 (Testimony from Lines 4 through 10 read
17 back.)

18 Q (BY ATTORNEY VISHNY) A gun is a great equalizer,
19 isn't it?

20 A That's what you think, but I never had no gun, I
21 don't use no gun.

22 Q Well, we'll talk about that, whether you had a gun or
23 not that night.

24 A Go ahead, keep talking about it, because I ain't got
25 no gun.

1 Q Well, let's talk about what you claim you had in your
2 hand. Okay? So you said it was your e-cigarette,
3 right? Do you remember that tape, you're holding
4 something in your hand?

5 A Like I said, I don't remember if it was a e-cigarette
6 or a bottle of beer.

7 Q Okay. Well, first you told the police you didn't
8 have anything in your hand, right?

9 A Not that I could recall, yeah.

10 ATTORNEY VISHNY: Ready. 35:44.

11 ATTORNEY SCHNEIDER: We got to end our play
12 point from the last section. It was 51:47. I didn't
13 want to -- she goes right into a question.

14 ATTORNEY VISHNY: Try to remember to do
15 that. Page 44, Line 1.

16 Judge, you know, this is -- I'm just wondering,
17 maybe we should ask the jurors if they want the
18 lights off each time. We're going -- this is really
19 short, what we're doing. We're going to play a much
20 longer segment later. Really, there's not much to
21 see. There's a lot to hear.

22 THE COURT: Members of the jury, do you
23 want the lights down or is --

24 UNIDENTIFIED JUROR: I like them down.

25 ATTORNEY VISHNY: Okay. I just thought

1 we'd ask. Wasn't sure. Okay.

2 Q (BY ATTORNEY VISHNY) All right. Let's hear what you
3 said to the police.

4 MR. GATTON: 35:43 on the time stamp.

5 (Video played.)

6 ATTORNEY VISHNY: That ends at 36:10. Go
7 to 49:48.

8 Q (BY ATTORNEY VISHNY) So you told the police you
9 didn't have anything in your hand, right?

10 A I guess that's what the video said.

11 Q Actually, you said it more than once, didn't you?
12 Let's listen to the second time you said it.

13 When the police are asking you what did you do
14 with the gun after, what did you tell the police to
15 that?

16 A Like I said, I had no gun so I don't know why you
17 keep saying that, so whatever.

18 Q Well, you keep saying you had no gun.

19 A Because I didn't have a gun.

20 Q Okay. Well I don't think you're going to walk into
21 court and admit to having a gun, right?

22 A If I did, I would admit that I had a gun

23 Ω So that happens?

24 A I never had a gun, did I? Were you there that night?

25 Q I'm the one asking the questions, Mr. Lee. You are

1 the witness.

2 A So you're all pissing me off and shit, man, always
3 lying and putting bullshit on me like that, man, of
4 course that shit's gonna piss me off, man.

5 ATTORNEY VISHNY: Are we ready yet? Page
6 59, Line 4, starting at 49:48.

7 (Video played.)

8 ATTORNEY VISHNY: Stop.

9 Q (BY ATTORNEY VISHNY) So let me ask you about
10 smoking. You smoke, right?

11 A Yes, cigarettes and e-cigarette.

12 Q So shortly before this happened, you went outside to
13 have a smoke from Luna, correct?

14 A Most of the time, yeah, I was outside smoking.

15 Q For the what time?

16 A I said most of the time I was at Luna I was outside,
17 in and out.

18 Q Smoking regular cigarettes?

19 A Cigarette and e-cigarette.

20 Q Because you can't smoke inside Luna, right?

21 A Yes.

22 Q So you go out to smoke regular cigarette,
23 e-cigarette, but you can't smoke an e-cigarette
24 inside Luna?

25 A No, because you get caught then you get kicked out.

1 Q And you didn't want to get kicked out.

2 A Yes.

3 Q So let me get this. You come in from smoking and you
4 put your e-cigarette in your pocket, right?

5 A Yes.

6 Q Because you're going to have to use your hand to hold
7 a beer.

8 A Yes.

9 Q Can't -- you're right handed?

10 A Yes.

11 Q You say you punch the guy with your right hand?

12 A Yeah.

13 Q And then you're looking at him, right?

14 A Yeah.

15 Q You might have a beer in your hand and punch him with
16 the hand at the same time?

17 A No. Before I punched him I would have a bottle in my
18 hand. I put it to my left.

19 Q Right. You put it in your left hand, is that what
20 you're saying?

21 A Yeah.

22 Q Or you put it on the ground?

23 A I would hold the bottle in my hand.

24 Q You're not worried about beer spilling all over you
25 if you're in a fight, right?

1 A Why would you if it's a fight?

2 Q Well, when you're a fight, isn't it smart to have
3 both hands available?

4 A I can throw one punch with the right. If he charges
5 in, smash him with the bottle with my left.

6 Q Okay. So there's a purpose, you want to use the
7 bottle as a weapon?

8 A Yeah.

9 Q Now, you told the police that the only reason you ran
10 after the shooting was because you had been shot
11 before, right?

12 A I ain't gonna lie, yes.

13 Q And you told them that the reason you lied to them --
14 well, let me go back. When the police first came and
15 talked to you, you didn't really even tell them about
16 being in a fight, right?

17 A No, not really.

18 Q You told them that you had left Luna and you had gone
19 home alone.

20 A Yes.

21 Q Completely different than what you said in court
22 here.

23 A Yes.

24 Q Right? And what you told them was that you lied
25 because you were so scared because you witnessed a

1 shooting and you hadn't slept for two days over it.

2 A Yes.

3 Q Now you have a brother named Hu?

4 A Yes.

5 Q He's an older brother?

6 A Yes.

7 Q And you called him up right away after the shooting,
8 didn't you?

9 A No, not that I can remember.

10 Q You didn't call him at all that morning?

11 A Not that I can remember.

12 Q So this happens at about two a.m., you don't call Hu
13 at his job before he gets off work at five or 5:30?

14 A Not that I can remember. The only person I remember
15 calling was Letty.

16 Q Okay. So you made no other phone calls according to
17 what you had to say?

18 A Yes.

19 Q Didn't you talk to Hu about what happened and tell
20 him you were involved in the shooting?

21 A Not that I can remember.

22 Q Didn't you call him and ask him for help?

23 A No, not that I can remember.

24 Q All right. So the police talked to you and you start
25 lying to them right from the beginning, right?

1 A Where? At my workplace? Yes.

2 Q At Norka.

3 A Yes.

4 Q And a couple of days have already gone by, right,
5 since -- or three days have gone by since the
6 shooting, right?

7 A Yes.

8 Q Police come in and they tell you they've already
9 talked to Joe and Phong when they come in to see you,
10 right?

11 A No, they didn't tell me that yet.

12 Q Well, didn't they tell you that they had talked to
13 Joe and Phong, and what you told them was you didn't
14 know about the shooting personally but you had heard
15 about it on the news, or do you remember saying that
16 you found out about the shooting on the news?

17 A Yes.

18 Q All right. And then you denied being in a fight at
19 first when they talked to you, right?

20 A Yes.

21 Q And then you said, well, there's a fight and I got
22 hit on the back of the head. Right?

23 A Not that I can remember about that, but yes.

24 Q And then you said the only reason you ran after the
25 shooting was because you had been shot before in a

1 bar.

2 A Yup. Who wouldn't.

3 Q Then the police asked you who you were there with,
4 and what you said was some of your childhood friends,
5 right?

6 A Yes.

7 Q And then you just claim that Joe Thor wasn't even
8 there?

9 A Joe Thor was there.

10 Q But you lied to the police and told them that Joe
11 Thor wasn't there. Do you remember telling the
12 police you didn't remember Joe being there?

13 A Not that I can remember.

14 Q All right.

15 ATTORNEY VISHNY: The last ending play
16 point, we'll correct the record with that in a
17 minute. I'll have Solomon look at it.

18 Q (BY ATTORNEY VISHNY) All right. Page 77. Do you
19 remember the police saying to you: You know like
20 face-to-face with Phong, and you actually got in
21 between and you pushed Joe away and Joe actually hit
22 the wall. Do you remember the police telling you
23 that?

24 A No.

25 Q And then your response was: I don't remember Joe was

1 there. I remember Phong was there.

2 A Like I said, not that I can remember.

3 Q And then the police say to you: That's the
4 information we got?

5 A Not that I can remember.

6 Q And you say: Because I was talking to Phong the
7 whole time.

8 A Whatever is on this transcript, yes.

9 Q So you even had some selective memory when the police
10 are talking to you at Norka, right?

11 A No.

12 Q Okay. Then you lied to them and claimed you walked
13 all the way home.

14 A Yes.

15 Q You even went through the whole route with Sergeant
16 Rabas, told him which street you turned on?

17 A Yes.

18 Q Went down here, right here, a left there, right?

19 A Yes.

20 Q Train here, a stop sign there, right?

21 A Yes.

22 Q And this was pretty elaborate, what you told them,
23 right?

24 A Yes.

25 Q You also claimed that you were alone?

1 A Yes.

2 Q In fact, the word you said was, when Sergeant Rabas
3 said did you drive, you said, nope, had to walk my
4 ass home. Do you remember that?

5 A Yes.

6 Q All right. You denied running away with Joe and
7 Phong or going to Joe's house.

8 A Yes.

9 Q And when the police later told you they know that
10 you'd gone to Joe's, only then did you tell them that
11 you had gone to Joe's.

12 A Yes.

13 Q Okay. So supposedly you hit a guy who hits you first
14 who is a lot bigger than you in a bar and you have to
15 lie to the police about just throwing a punch.

16 A Well, the reason why I lied is because why would you
17 want to say that you were there after you punch
18 somebody that had been shot from somebody else.

19 Q Some people like to tell the truth, don't they?

20 A Yes.

21 Q But apparently you're not one of them?

22 A Because I was scared because I didn't want to get
23 pinned for something I didn't do.

24 Q I see. So you think if you had stuck around, called
25 the police, like Dan Kersten, the bouncer, or Adam

1 Richardson who was in the bar, like some of these
2 people who were there, you think if you had stuck
3 around, called the police, told them what happened,
4 that they would have just automatically have said you
5 were the shooter.

6 A They already did when they were at Norka.

7 Q Weren't you worried that other people in the bar
8 would have seen you and what happened and they would
9 say that guy is the guy who did the shooting?

10 A No. Because I wasn't.

11 Q All right.

12 ATTORNEY VISHNY: I'm sorry. I cut his
13 answer off.

14 (Question read back.)

15 Q (BY ATTORNEY VISHNY) Or were you worried that maybe
16 they would say Phong was the shooter?

17 A No.

18 Q You're pretty close to him, right?

19 A Yes.

20 Q Closer than he and Chong are, right?

21 A Yeah. What? Closer than what?

22 Q You're closer to Phong than Chong is, right?

23 A Closer to Phong than Chong is with Phong?

24 Q Yeah.

25 A You could say that, yes.

1 Q Well then the police, after you're telling them you
2 left alone, they tell you they know it's not true
3 because they have the cameras and the cameras clearly
4 show you, right?

5 A Yes.

6 Q Then you lie to them about ditching your clothing --
7 not your clothing, excuse me.

8 A I didn't lie about ditching my clothes. I didn't
9 ditch nothing.

10 Q I just wanted to correct myself. You lied about
11 Phong ditching his vest, right?

12 A That ain't my problem so why would I.

13 Q So since it's not your problem, you might as well
14 just lie about it.

15 A I guess, yeah.

16 Q And if it's not your problem so you might as well
17 just lie about Joe throwing his hat away, right?

18 A I guess, yes.

19 Q And it's not your problem so you just might as well
20 lie about everything, right?

21 A Oh, yes.

22 Q So when the police tell you they know the clothing is
23 being ditched, you respond and say you think the
24 police are accusing you of being the shooter?

25 A Yes.

1 Q And you said that before the police ever even accused
2 you of doing the shooting.

3 A Because there was a time when police already accused
4 me of being a shooter once.

5 Q In this interrogation you said this to the police,
6 that they were accusing you of being the shooter
7 before they ever said to you --

8 A No, I never said they accused, I said are you guys
9 accusing me, it was a question towards them.

10 Q All right.

11 ATTORNEY VISHNY: So let's play at 21:43 --
12 I'm sorry, 21:58.

13 ATTORNEY SCHNEIDER: Please tell me the
14 ending point of the last section.

15 ATTORNEY VISHNY: 50:09.

16 ATTORNEY SCHNEIDER: Okay.

17 ATTORNEY VISHNY: And we're at Page 29,
18 Line 11.

19 Q (BY ATTORNEY VISHNY) Let's see what you said about
20 ditching clothing and being the first person.

21 (Video played.)

22 ATTORNEY VISHNY: Stop.

23 Q (BY ATTORNEY VISHNY) So then the police confronted
24 you and talked to you about having pictures in Luna,
25 right?

1 A Yup.

2 Q Is that a yes?

3 A Yes.

4 Q They showed them to you?

5 A Yes, they did.

6 Q They told you they had video showing the clothing
7 being tossed away?

8 A No.

9 Q You don't remember that?

10 A No.

11 ATTORNEY SCHNEIDER: Can I just put in the
12 end play point was 22:46?

13 THE COURT: 22:46? Thank you.

14 ATTORNEY SCHNEIDER: I'd rather note it
15 every time than have to try to guess later.

16 Q (BY ATTORNEY VISHNY) All right. So -- all right.

17 Now, they show you pictures with something in
18 your hand, right?

19 A Yes.

20 Q And you kept saying you didn't have anything in your
21 hand, as we talked about earlier.

22 A Yes.

23 Q So I'm not going to play it twice, but in fact you
24 did have something in your hand.

25 A Yes.

1 Q And I'm going to show that to you a little bit later.

2 When they kept questioning you, you told the
3 police that they were trying to, quote, fucking put
4 me and Joe for a person I did not kill.

5 A What?

6 Q You said to the police that they were trying to,
7 quote, fucking put me and Joe for a person I did not
8 kill, end quote. You remember saying that?

9 A Not really.

10 Q Page 50.

11 So talking about the shooter, Sergeant Rabas
12 says to you: Well, it is stupid shit.

13 And you say: No, it's fucking lame 'cause.

14 Sergeant Rabas says: But you know it's not.

15 And then you say: You guys are trying to
16 fucking put me and Joe for a person I did not kill.

17 Rabas: Well then who killed him.

18 You: I don't know who killed him.

19 A Yes.

20 Q Actually it's I don't know who killed who, right?

21 A Yes.

22 Q Those are your words? The answer is yes?

23 A I already said yes.

24 Q So then you claim you punched him and then 30 seconds
25 later the guy just happens to get shot by some other

1 person.

2 A Yes.

3 Q That's what you said, right?

4 And then later -- even later after they show you
5 a picture, at one point you got mad and you
6 backtracked and said, well, gosh, it can't even be me
7 because it's not my coat. And I can just say that to
8 the police because they're accusing me so I can just
9 go ahead and say that to them. Do you remember that?

10 A Like I said, I didn't know if the cameras were
11 infrared so it blocked out the black spots on my
12 jacket.

13 Q I see. Well they didn't actually show you the video,
14 right?

15 A No. There was no video.

16 Q They showed you still shots?

17 A Whatever that is, but yeah.

18 Q But you knew that was the same coat that you wore at
19 Luna?

20 A Not really because I didn't have -- I didn't see the
21 black spots on my coat until they said it was the
22 infrared, so yeah.

23 Q You knew that was you in the picture they showed you
24 at Luna, right?

25 A No.

1 Q You say you didn't even recognize yourself?

2 A No, not until they said it was infrared. This is my
3 jacket.

4 Q You knew that you ran out Joe then you then Phong,
5 you knew that.

6 A No. People told me Phong was pushing me out.

7 Q Well you knew Joe was ahead of you, if you don't have
8 eyes in the back of your head, right?

9 A No, because by the time me and Phong left, Joe
10 already booked out.

11 Q So Joe was out the door before you left, that's your
12 testimony?

13 A Yup. Joe, and then by the time me and Joe (sic) got
14 to the corner of Luna, Joe was way up the street
15 already.

16 Q Right. But I didn't ask about the corner, I'm asking
17 about leaving Luna. So which one is it?

18 A Joe was out of Luna before me and Joe (sic), yes.

19 Q So Joe was out of Luna before you got to the door,
20 right?

21 A Yes.

22 Q That's what you say, and that's what you told the
23 police?

24 A That's what I know.

25 Q All right.

1 ATTORNEY VISHNY: You know what? I don't
2 want to waste the jury's time while I look for this
3 picture. We'll just show the tape later.

4 MR. VALDES: 32.

5 ATTORNEY VISHNY: Well, maybe if I can find
6 it quickly.

7 ATTORNEY SCHNEIDER: Try 33, actually, if
8 you're looking for the sequence.

9 ATTORNEY VISHNY: 33?

10 Q (BY ATTORNEY VISHNY) Why don't you come up here so
11 everyone on the jury can see this and you can see it
12 too. This is you, right, in Picture 33I?

13 A Yes.

14 Q So obviously you can't see the spots on your coat,
15 right?

16 A No.

17 Q But you can recognize yourself from the behind, can't
18 you?

19 A Not really.

20 Q Really? And you can recognize that's Joe walking
21 right out the door, isn't it?

22 A I don't know if that's Joe or not.

23 Q Okay. And that's Phong right behind you, right?

24 A Yeah, that was when Phong was pushing me out.

25 Q But if Joe Thor -- if it's provable that this is Joe

1 Thor, he's literally right in front of you, he's not
2 already out of Luna when you're talking --

3 A Like I say, I don't know, but by the time me and
4 Phong got up to the corner, he was way up the hill.

5 Q Okay. We'll talk about the corner. Because you were
6 running as fast as you could out of there, right?

7 A Not really.

8 Q Well Joe was ahead of you, right?

9 A Way ahead, yes.

10 Q He's in better shape than you are?

11 A You could say that, yes.

12 Q So were you strolling out of Luna?

13 A No, just fast walking.

14 Q You were trying to look for a place to hide, weren't
15 you?

16 A No.

17 Q In fact, when you got out of Luna, first you thought
18 about running up the parking lot and then you kept
19 going north on Division Street?

20 ATTORNEY SCHNEIDER: I think that calls for
21 speculation. She can ask him where he went, but
22 otherwise she just speculated what he thought. I'm
23 going to object.

24 THE COURT: I think he would be able to
25 answer what his thoughts were. Do you understand the

1 question?

2 THE WITNESS: Yes.

3 Q (BY ATTORNEY VISHNY) Can you answer it please?

4 A Nope. I just went straight up Division. That was
5 it.

6 Q So you never took a -- tried to think about or you
7 never took a short detour into the parking lot or
8 just a few steps and then go back?

9 A No.

10 Q Now the police told you they could prove it was you
11 who did the shooting. You remember that part,
12 right?

13 A Not that I can remember.

14 Q And do you remember them saying that they had five
15 people who said it was you?

16 A Not that I can remember about that.

17 Q All right. I'm going to show you Page 51. You say:
18 I'm fucking mad because you guys are trying to blame
19 me for something I didn't do. That's you, right?

20 A Yes.

21 Q And what they said -- what Sergeant Rabas says: I'm
22 not, I'm just relaying information that was told to
23 me because, you know what, there is one, two, three,
24 four, five different people saying Paul shot him in
25 the side of the head.

1 And your response is: Please, man.

2 A Yes.

3 Q Now, when the police talk to you, they said they had
4 a really strong case against you, right?

5 A I don't remember.

6 Q Well, five people in your opinion saying they saw you
7 shot, that would be a strong case, wouldn't it, in
8 your opinion?

9 A In my opinion, no, because I wasn't the shooter, why
10 would I care what people think.

11 Q And do you remember the police saying after you said
12 you hit him that the victim in the case didn't even
13 have a mark from a gun or a punch? I'm sorry. I
14 didn't mean to say a gun. That was a mistake.

15 Didn't have a mark on his face from being punched?

16 A Like I said, I knicked him.

17 Q I'm sorry?

18 A Like I said yesterday, I knicked him.

19 Q You knicked him on the chin?

20 A Yes.

21 Q With your fist?

22 A Yes.

23 Q But somehow he miraculously had no bruise or mark
24 from that.

25 A A knick is not entirely a punch.

1 Q So you have an e-cigarette in your hand and you hit
2 somebody on their chin and that's not going to leave
3 a mark in your opinion.

4 A Yes.

5 Q And then the police tell you that if you don't
6 confess to this, or words to that effect, that you're
7 going to get life. Do you remember that?

8 A No, not really, but yeah.

9 ATTORNEY VISHNY: We're going to play
10 starting at 49:45, Page 59, Line 1. Go ahead.

11 (Video played.)

12 ATTORNEY VISHNY: Stop. The end play point
13 is 53:35.

14 Now if we can please go to 1:18:20.

15 Q (BY ATTORNEY VISHNY) So the police told you that you
16 should be scared and you could get life, right?

17 A Yes.

18 Q And that you should be scared because you killed a
19 guy.

20 A I'm not scared because I didn't.

21 ATTORNEY VISHNY: 1:18:20. Go ahead. I'm
22 sorry.

23 (Video played.)

24 Q (BY ATTORNEY VISHNY) That's you, right?

25 A Yes.

1 Q And then they told you, well, you asked -- you said
2 you wanted to see the video, right?

3 A Because they had -- they did tell me they had a
4 video, right? Didn't they earlier? You guys played
5 the other part. They said they had the video. Why
6 keep showing me pictures, why not show the video of
7 me shooting it.

8 Q So you figured they probably didn't really have the
9 goods on you?

10 A No, I didn't think they had the goods on me. They
11 told me that they had the video, so why not show a
12 video, why keep showing the pictures.

13 Q So when they say to you they have the video, and
14 you're starting to think, you know what, I don't
15 really think they do have the video?

16 A I didn't think nothing like that. They said they had
17 a video, okay, show me the video.

18 Q So you said it, show me the video?

19 A Yes, I did.

20 Q Kind of like show me the money, right?

21 A No, not like that.

22 Q So what they tell you is, look, we'll show you the
23 video when you get to court as the accused in this
24 case, not those exact words, but that's basically
25 what they said to you.

1 A Not that I can recall.

2 ATTORNEY VISHNY: Page 72. Did we get the
3 end of that last play point?

4 MR. GATTON: 1:18:20.

5 ATTORNEY VISHNY: Okay.

6 Q (BY ATTORNEY VISHNY) Well, you say to them, as you
7 said, well, fucking go get the video, I want to
8 rewatch it. You said that, right? That's you,
9 correct?

10 A Yes.

11 Q And Sergeant Rabas says, you're going to, you're
12 going to watch it a lot, right?

13 A Yes.

14 Q All right. So they tell you they're going to play
15 the video for you in court?

16 A Okay. I'm in court. Play it.

17 Q You're in court as a witness, I'm going to keep
18 asking you questions.

19 A Then why bring it up if you got no video to play for
20 me in court?

21 Q Mr. Lee, I will ask you questions. I'm not saying
22 there was a video, I'm saying you realized there is
23 no video, right?

24 A No, I didn't realize there was no video. They told
25 me there was a video.

1 Q Right.

2 A So I asked them, show me the video.

3 Q And then they don't do it, right?

4 A Yes.

5 Q And now you're asking me to show you a video?

6 A Because you're coming up to me with it.

7 Q And I'm not showing you a video, right?

8 A No.

9 Q So you're thinking, boy, there is no video?

10 A No, I'm not thinking that.

11 Q You were going back and forth and back and forth with
12 the police, the kind of stuff we're playing, not
13 going to play the whole thing, but you're going back
14 and forth with them along the lines of what you've
15 seen and what you've heard, right?

16 A Yes.

17 Q And along the lines of what I've been asking you?

18 A Yes.

19 Q And at a certain point what they tell you is that if
20 it wasn't you, it had to be somebody in your group.
21 Do you remember that?

22 A No, not that I can remember.

23 Q Okay.

24 ATTORNEY VISHNY: What's the play point?

25 Okay. We're going to start at 1:18:20. Okay. All

1 right. You can play.

2 (Video played.)

3 ATTORNEY VISHNY: Stop. We ended at
4 1:07:34.

5 Q (BY ATTORNEY VISHNY) So the police did say to you,
6 it's either you or it's going to be somebody that you
7 know, somebody in your group, right?

8 A I guess that's what's on the video.

9 Q Well, this interrogation at Norka -- let me just
10 start this. You weren't under arrest at the time
11 this happened?

12 A No.

13 Q You planned on going back to work this whole time?

14 A Yes.

15 Q And in fact, when you got up at the end of this, you
16 thought you were going back to work and you take a
17 couple steps.

18 A Yes.

19 Q But you don't go back to work because they
20 immediately put you under arrest?

21 A Yes.

22 Q They put handcuffs on you?

23 A Yes.

24 Q They take you to the police department?

25 A Yes.

1 Q They put you in a room?

2 A Yes.

3 Q Now it's pretty serious because you're being arrested
4 for this homicide.

5 A Yes.

6 Q And they leave you alone in that room for a while.

7 A Yes.

8 Q You got some time to think.

9 A No. I just slept.

10 Q You just slept. You're not thinking at all?

11 A No.

12 Q So you're saying you slept the entire time while you
13 were in that room?

14 A Yes.

15 Q Did you lie down on the floor?

16 A Yes.

17 Q And you never sat up and thought at all.

18 A No.

19 Q So after you're sleeping, what you say is sleeping or
20 thinking, so, you know, the police are arresting you
21 for murder, you're in custody, and your response is
22 I'm just going to go to sleep now.

23 A Yes.

24 Q Because as you said, you were high.

25 A Yes.

1 Q Because you go to work high all the time at your
2 job?

3 A Sometimes, yes.

4 Q Now we're switching. All right. We'll come back to
5 the sleeping part later. All right.

6 Now, when the police -- actually -- okay.

7 ATTORNEY VISHNY: One minute, please.

8 Q (BY ATTORNEY VISHNY) All right. Let's show a video
9 of you waiting for the police to come in and talk to
10 you while you're sleeping on the floor. Okay?

11 ATTORNEY VISHNY: We're going to actually
12 show it -- we're going to speed it up, Judge, so we
13 don't have to spend a lot of time doing it. So
14 what's our first play point? Okay. What is it,
15 though, so I can put it in the record?

16 MR. GATTON: 12:02:22.

17 ATTORNEY VISHNY: 12:02:22. And when
18 police come in we're going to stop it. We're playing
19 this fast. Okay.

20 Q (BY ATTORNEY VISHNY) Let's show a video of you
21 sleeping.

22 (Video played.)

23 ATTORNEY VISHNY: Is that as fast as it
24 goes?

25 Q (BY ATTORNEY VISHNY) So that's sleeping, huh? Is

1 this sleeping too? No? That's sleeping? Are you
2 going to answer my question?

3 A No, I was sleeping.

4 Q Most of the time, huh?

5 A If I can remember, yes, most of the time.

6 ATTORNEY VISHNY: All right. We're going
7 to stop the video.

8 ATTORNEY SCHNEIDER: At 12:42:29.23.

9 Q (BY ATTORNEY VISHNY) So after sleeping and not
10 thinking and doing what sleeping people do, the
11 police come in to question you again, right?

12 A Yes.

13 Q And this time as they question you, Sergeant Thao is
14 back there, right?

15 A Yes.

16 Q Another sergeant, Sergeant Schira, S-C-H-I-R-A, comes
17 in to talk to you, right?

18 A Not that I remember who did, but yes.

19 Q And it's in this interrogation where again you are
20 told that you could be going away and convicted of a
21 murder, right?

22 A Not that I remember, but yes.

23 Q You've had some time to think about it, right?

24 A Not entirely, but yes.

25 Q The police tell you, look, it's either you or

1 somebody else, and they suggest to you it's Chong?

2 A Yes.

3 Q And now you lie knowing that it's either them or you,
4 you got two choices here, and you're going to tell
5 them Chong did it?

6 A Not that I can remember.

7 Q All right.

8 ATTORNEY VISHNY: We're going to play --
9 and this is going to be a longer segment, Your Honor.
10 There are a couple places, I just want to let
11 everybody know, where we're going to very quickly
12 start and stop because there is some irrelevant
13 material in it.

14 THE COURT: That's fine.

15 ATTORNEY VISHNY: But otherwise we're going
16 to play about a roughly 20 minute -- half hour to
17 20-minute segment.

18 THE COURT: Let me just ask before --
19 understanding that this may be a longer segment, does
20 the jury need any sort of a break or water?

21 (No response.)

22 THE COURT: Okay. Good.

23 ATTORNEY VISHNY: Yeah. We are starting
24 this -- Solomon, can you please tell us our starting
25 point?

1 MR. GATTON: 12:47:08.

2 ATTORNEY VISHNY: And that would be Page 5?

3 You can go ahead.

4 (Video played.)

5 ATTORNEY VISHNY: Can we stop for one
6 minute? Can the jurors hear this?

7 UNIDENTIFIED JUROR: Barely.

8 ATTORNEY VISHNY: Is there any chance we
9 can get this louder?

10 MR. GATTON: That's as loud as it goes.

11 ATTORNEY VISHNY: That's as loud as it
12 goes? Is there any way to play this through the
13 court microphone system?

14 THE COURT: I might be able to pull my
15 speakers as well.

16 ATTORNEY WEITZ: Is there a portable
17 microphone, Your Honor?

18 THE COURT: Do we have the portable
19 microphone?

20 ATTORNEY SCHNEIDER: Judge, can I approach
21 real quick?

22 THE COURT: You may. Rather than have you
23 sit and watch my ineptitude at technology, we'll let
24 you go back into the jury room for five minutes.

25 This should be a very short break, and we'll be able

1 to get this squared away.

2 Please rise for the jury.

3 (The jury was escorted out of the
4 courtroom.)

5 (Court in recess.)

6 THE COURT: All right. All rise for the
7 jury, please.

8 (The jury was escorted into the courtroom.)

9 ATTORNEY VISHNY: The jury couldn't hear,
10 so we're going to start it back from the beginning
11 again.

12 THE COURT: That's perfectly fine.

13 ATTORNEY VISHNY: So we are starting at
14 12:47:07.

15 Q (BY ATTORNEY VISHNY) Now, Mr. Lee, just to orient us
16 again, you were put under arrest, waited for the
17 police to come to talk to you, and now you're talking
18 to them in the early morning hours of December 12th.

19 A Yes.

20 Q Okay.

21 (Video played.)

22 ATTORNEY SCHNEIDER: For the record we
23 stopped at 1:15:13.

24 Q (BY ATTORNEY VISHNY) Well that wasn't the end of the
25 interrogation, was it?

1 A I don't remember, but maybe not.

2 THE COURT: Can you -- just one second.

3 Can you move the -- thank you, Mr. Lee.

4 Q (BY ATTORNEY VISHNY) That wasn't the end of the
5 interrogation, was it?

6 A I think a little bit after that it was done.

7 Q Well, actually they talked to you off and on until
8 you got released at 1:00, later that afternoon,
9 right?

10 A I don't remember the time.

11 Q All right. So one of the questions they asked you
12 was who -- besides Chong, who else knew Chong did the
13 shooting. Do you remember that?

14 A Yes.

15 Q And what you told them was probably only you knew it,
16 right?

17 A I don't know. I don't remember saying that.

18 ATTORNEY VISHNY: Page 28.

19 Q (BY ATTORNEY VISHNY) Who besides you -- who knows
20 that Chong did the shooting. That's what they asked
21 you, right? And you said: Probably just me.

22 And they said: There's got to be other people,
23 man.

24 And then you said: Well, just me or Joe.

25 And they say: Joe Thor?

1 And then you said: Yes.

2 Do you remember that?

3 A Yes.

4 Q That's what happened, right?

5 Now, later, just about -- shortly later they're
6 talking to you, and you can just read this, about you
7 and Joe hanging out just the two of you after the
8 shooting, right? They say: What else, when you guys
9 ran that night. You must have talked about it. You
10 must have said holy shit, right? I mean you guys ran
11 up there. You took off your clothing for a reason
12 because you obviously didn't want us to find you.

13 And then you say: No, only they did. I didn't.

14 Right?

15 A Yes.

16 Q And then they say: Okay, did you discuss it though,
17 did you talk about what happened.

18 And you said: No. Me and Joe, we just hung
19 out, and I was like, dude, like, is that guy's, like,
20 stuck to the -- it's unintelligible. So then he
21 started talking shit to me and somebody hit me so I
22 hit somebody.

23 So that's what you said, right?

24 A Whatever it says on this transcript, yes.

25 Q So you're not mentioning Phong at all, just Joe,

1 right, Joe's the only person who knows it?

2 A Phong is there.

3 Q I'm talking about what you told the police.

4 A Oh.

5 Q At this time you're not telling the police Phong was
6 there, you're only letting them know that Joe was
7 there. Correct?

8 A I guess, yes.

9 Q And then they say to you: Right, but then you talk
10 about who actually shot this guy. I mean if, dude,
11 if you and I are friends and all of a sudden some guy
12 (unintelligible). We're fighting with some guy then
13 some guy gets shot and we take off running, we're
14 going to talk about that shooting. We're both going
15 to say holy shit. Bottom shot that guy or what.
16 Whatever happened. So that was gonna happen that
17 night.

18 So then when they tell you you must have talked
19 about it, you said yeah, correct?

20 A Yeah.

21 Q And then he asked you: Well what did you say, I mean
22 did you say Chong shot that guy.

23 And you said: No, we didn't know Chong shot
24 that guy until he told me on Monday.

25 That's what you said, right?

1 A Yes.

2 Q And then he asked you: Well okay, that makes sense.

3 And how did Joe find out?

4 And you say: Hmm?

5 How did Joe find out:

6 And you said: I don't know.

7 Right?

8 A Yes.

9 Q And then they say, Well do you think Joe's
10 (unintelligible) him, is Joe -- Chong and Joe friends
11 too.

12 And you say: Yes.

13 Right?

14 A Yes.

15 Q And then they say to you: Well so maybe Joe -- Chong
16 told him too. You didn't tell Joe? Someone else
17 did? How do you know Joe knows?

18 And you said: I don't know.

19 Correct?

20 A Yes.

21 Q And then later, as this goes on, you eventually tell
22 them, well, Chong came over to Joe's house. Did you
23 tell them that, that Chong came to Joe's?

24 A Yes.

25 Q And claimed he was the shooting (sic). So then later

1 on you tell this to police, right?

2 A Like I said, I don't remember much about it but all I
3 remember was me and Phong called for a ride. That
4 was it.

5 Q All right. Now, during this interrogation the police
6 are telling you that they still think that even
7 though Chong is the shooter that you must have run
8 out with a gun in your hand, right?

9 A Something like that.

10 Q And you eventually persuade them that it's not a gun,
11 it's your e-cigarette, right?

12 A Yes.

13 Q They even had you do a reenactment. Do you remember
14 that?

15 A Yes.

16 O All right. And let's watch your reenactment now.

17 ATTORNEY VISHNY: That would be, one
18 minute, can I have where we're starting?

19 MB. GATTON: 1:15:49.

ATTORNEY VISHNY: 1:15:49 Yeah Okay

Okay. We can start.

22 (Video played.)

23 Q (BY ATTORNEY VISHNY) Okay. So that's your
24 reenactment there right?

25 A Yes

1 Q Face-to-face, right?

2 A Yes.

3 Q Right hand?

4 A Yes.

5 Q Punching straight forward, right?

6 A Yes.

7 Q Not like this?

8 A No upper cuts, just a straight shot to the -- no
9 upper cuts, no hooks, just jab to the chin.

10 Q I'm going to show you a couple diagrams.

11 ATTORNEY SCHNEIDER: 120 something maybe?

12 THE CLERK: 132.

13 ATTORNEY VISHNY: 132. I'll tell you what
14 -- go ahead. What was the other one?

15 ATTORNEY SCHNEIDER: I don't know.

16 ATTORNEY VISHNY: Hold on. I just realized
17 it's going to be pretty hard to switch over so I'm
18 going to wait on that.

19 THE COURT: 123.

20 Q (BY ATTORNEY VISHNY) All right. Now, you drew a
21 diagram at that point, correct, at some point when
22 you were talking to them?

23 A No, I didn't draw no diagram.

24 Q Okay. So you didn't draw a diagram, Sergeant Thao is
25 the one who drew a diagram, right?

1 A One of the two.

2 Q Neither of the two drew the diagram?

3 A One of the two.

4 Q All right. So one of the police officers drew the
5 diagram, not you?

6 A Yes.

7 Q And when that diagram was drawn, it didn't show any
8 movement in it as far as you know, correct?

9 A Yes.

10 Q All right. I'll get back to that later because we
11 have -- all right.

12 Now, we want to go to you wrote a statement,
13 that was talked about yesterday, correct?

14 A Yes.

15 Q And the way that happened was basically they told you
16 they didn't want to put words in your mouth, right?

17 A Yes.

18 Q But they in fact told you what to write?

19 A No, just what Thao wanted me to write. That was
20 it.

21 Q So you say it was Sergeant Thao. Okay.

22 ATTORNEY VISHNY: Now we are on Item 173.

23 We're just switching to a different video.

24 Q (BY ATTORNEY VISHNY) So when they asked you to write
25 a statement, let me -- I'll just ask some questions

1 while we're getting set up here.

2 When they talk to you after you go through all
3 of this, they leave you alone in the room for a
4 while, right?

5 A Not that I can remember. I told you that already.

6 Q All right. But if you have to go to the bathroom,
7 they give you bathroom breaks?

8 A Yes.

9 Q And they come back and they talk to you some more,
10 right?

11 A Yes.

12 Q Take some pictures of you with your e-cigarette --

13 A Yes.

14 Q -- like you talked about yesterday. Had you write
15 out a statement.

16 A Yes.

17 Q And then they give you a ride home.

18 A Yes.

19 Q Now, one of the things that I don't think we
20 mentioned before was the first time when they talked
21 to you and you weren't in custody, when you were in
22 Norka, they didn't read you Miranda rights, right?

23 A No.

24 Q But this time they read you your rights before
25 questioning you?

1 A Yes.

2 Q So you knew this was pretty serious and, just like it
3 said, just like the police officers said, you were
4 potentially being charged here with a murder,
5 right?

6 A Yes.

7 Q And you knew that you either had to say it was you or
8 somebody else in order to get out of this, right?

9 A Yes.

10 Q And it was suggested to you that that person was
11 Chong, correct?

12 A Yes.

13 Q It's not a name you came up with on your own?

14 A No.

15 Q And then you grabbed it and took it and said it was
16 Chong.

17 A Yes.

18 ATTORNEY VISHNY: Are we ready?

19 MR. GATTON: Yes.

20 ATTORNEY VISHNY: 12:28:56. 12:34:17.

21 Pretty sure.

22 Q (BY ATTORNEY VISHNY) Okay. So now they're talking
23 to you. It's 11:58 in the morning is when this
24 starts.

25 ATTORNEY VISHNY: Page 28. At -- I think

1 it's at 12:34:17. Are we ready? Hopefully we've got
2 the -- go ahead. Are we at the right place?

3 MR. GATTON: Okay. Here we go.

4 (Video played.)

5 Q (BY ATTORNEY VISHNY) All right. So right after
6 you're told that by detective or, rather, Sergeant
7 Schira, that's when you start writing your statement,
8 right?

9 A Like I said, it's been a long time. I don't remember
10 when I did whatever.

11 Q Okay. Now, after that was all done, eventually you
12 get released, correct?

13 A Yes.

14 Q And you're given a ride home?

15 A Yes.

16 Q Who gives you the ride?

17 A Thao.

18 Q Okay.

19 ATTORNEY VISHNY: You want to get to
20 12:17:30?

21 Q (BY ATTORNEY VISHNY) Now, before Sergeant Thao takes
22 you home, he tells you, don't tell anybody about what
23 you told us. He tells you that, right?

24 A I don't know. Like I said, it's been a while. I
25 don't remember.

1 Q Okay. But earlier you had actually been told you
2 should go talk to your friends about what happened.
3 Do you remember that?

4 A No.

5 ATTORNEY VISHNY: Page 17.

6 Q (BY ATTORNEY VISHNY) This happened before you --
7 okay. The police tell you -- and they want you to go
8 and tell your friends Phong and Joe, hey, I need your
9 help, I need you to back me up on this. And that's
10 what you did, didn't you? You told Phong and Joe to
11 back you up?

12 A Not that I can remember.

13 Q Okay.

14 ATTORNEY VISHNY: You ready to play this?

15 MR. GATTON: Yup.

16 ATTORNEY VISHNY: Okay. Let's go ahead.
17 We are starting here at 12:17:30.

18 (Video played.)

19 Q (BY ATTORNEY VISHNY) Okay. So they tell you to talk
20 to your friends to go to bat for you, huh?

21 A What was that?

22 Q They tell you, you heard it, they tell you to talk to
23 your friends to go to bat for you at some point,
24 right?

25 A Who what?

1 Q To go to bat for you, did you just hear that on the
2 tape?

3 A Not really.

4 Q Okay.

5 ATTORNEY VISHNY: Was the tape audible that
6 people could hear what it said? Judge, were you able
7 to hear it? I just want -- I'm curious if it was
8 inaudible.

9 THE COURT: I could hear. I don't know
10 what other people heard. It was audible.

11 Q (BY ATTORNEY VISHNY) I'll show you the transcript
12 then since you don't seem to have heard it.

13 ATTORNEY VISHNY: Same thing I just played,
14 Miss Schneider.

15 Q (BY ATTORNEY VISHNY) Wait. Okay. So just what we
16 just played, in case you couldn't hear it, so Phong
17 and Joe, we may ask you to talk to those guys and
18 just say, hey, I need you, you guys are my friends, I
19 need help. I can't go to prison the rest of my life
20 because of something my brother did, and you know we
21 don't believe this is a conspiracy that you guys were
22 planning this. We don't see any of that. What we
23 see, you know, a terrible tragedy that happened in
24 the blink of an eye but you gotta get those guys to
25 basically go to bat for you. And you said yeah.

1 A What do you mean by "bat for you"?

2 Q Well he asked you that. You don't know what the
3 expression means -- to go to bat for you means?

4 A Yeah.

5 Q Do you know what it means to back you up?

6 A Yeah.

7 Q Okay. So you didn't understand what go to bat for
8 you means, right?

9 A No.

10 Q So you must have understood it somehow because the
11 next thing you said was I got to go talk to Joe,
12 right?

13 A Yeah.

14 Q And then the police officer says, yup, you do. And
15 of course they tell you that they don't want you to
16 -- they don't want Joe to lie, right?

17 A Yes.

18 Q And they just want you to tell him to tell the truth,
19 right?

20 A Yes.

21 Q So you go to Joe and have him back you up, don't you?

22 A Not that I can remember.

23 Q Okay. So that's kind of a selective loss of memory
24 like forgetting everything that was on the tape?

25 A No. Like I said, I put this behind me and I don't

1 remember much of it.

2 Q Yeah, well, there's people sitting in court who can't
3 put it behind them. You understand that, right?

4 A Yes, I understand their feelings about that.

5 Q Now, you know, speaking of this, actually the police
6 also told you, Page 6 in the transcript, that they
7 had built a great case against you and now what they
8 had to do was go get rid of this case to show that it
9 wasn't you. You remember them saying that?

10 A Like I said, I don't remember much of it.

11 ATTORNEY VISHNY: Page 6.

12 ATTORNEY SCHNEIDER: If I can ask, what
13 time interview, is this 11:58?

14 ATTORNEY VISHNY: This is 11:58. Page 6.

15 Q (BY ATTORNEY VISHNY) And so this is the one where
16 you do the reenactment. Okay? I mean not the
17 reenactment, excuse me, where you write the
18 statement. Do you understand that?

19 A Yes.

20 Q And then they say to you, so we gotta -- we gotta
21 overcome -- we built this great case against you.
22 Now all we got to do is we got to get rid of that
23 case to show it wasn't you, that it was in fact your
24 brother. So you -- you got to help us, right?

25 A Yes.

1 Q And they even talk to you about going and talking to
2 Chong, right?

3 A I don't remember.

4 Q But you never did that, right?

5 A Like I said, I don't remember much.

6 Q We're going to show you the video of you running out
7 of the door, but while we're getting that ready, you
8 were wearing a white coat with black markings on it
9 that evening, correct?

10 A Yes.

11 Q And although it looks white in the video, this is
12 what it looked like, right?

13 A Yes.

14 Q This is what you're wearing --

15 A Yes.

16 Q -- as you go running out, right?

17 A Yes.

18 Q And this is Chong's coat, right?

19 A I don't know.

20 Q You don't know if it's his coat or not?

21 A No.

22 Q Let me bring it closer to you.

23 A Like I said, I didn't really see him that night. I
24 don't know what he was wearing.

25 Q So you don't know if he -- that he was wearing a dark

1 colored coat that night, not a white coat, correct?

2 A Yes.

3 Q And you can see looking at this coat that there's two
4 kinds of material, one in the middle and a different
5 one for the sleeves?

6 A Maybe, but same color I guess.

7 Q But same color. And this red hat, this is Joe Thor's
8 hat that he was wearing that night, right?

9 A I don't remember what color or whatever he was
10 wearing.

11 ATTORNEY VISHNY: I don't believe I've had
12 it marked yet. That's a mistake on my part.

13 Q (BY ATTORNEY VISHNY) So just for the record, this is
14 Exhibit 133, Joe Thor's hat. You say you don't
15 remember that?

16 A I don't remember what color he was wearing, what
17 color hat.

18 Q And -- but you do remember that he threw it away,
19 right?

20 A I remember Phong had that white vest, yes.

21 Q And you remember this white vest, Exhibit 104, that
22 Phong Lee had on and threw away?

23 A Yes.

24 ATTORNEY VISHNY: Judge, I'd move No. 133
25 into evidence.

1 THE COURT: Any objection?

2 ATTORNEY SCHNEIDER: I don't know if we
3 have -- I mean -- which item, the vest or the hat?

4 ATTORNEY VISHNY: The hat.

5 THE COURT: The vest has been received, I
6 believe. The hat.

7 ATTORNEY SCHNEIDER: Okay. All right.

8 ATTORNEY MAIER: No objection.

9 THE COURT: All right. 133 will be
10 received.

11 Q (BY ATTORNEY VISHNY) Okay. Now we're going to watch
12 you running out of Luna here.

13 ATTORNEY VISHNY: And we are starting
14 this -- this is Exhibit No. 31 and we are starting at
15 what play point, Mr. Weitz?

16 ATTORNEY WEITZ: 13:50:25.

17 Q (BY ATTORNEY VISHNY) Okay. I'm going to have you
18 watch this.

19 ATTORNEY WEITZ: Full speed or --

20 ATTORNEY VISHNY: Full speed. I'll tell
21 you when to stop it.

22 (Video played.)

23 Q (BY ATTORNEY VISHNY) That's you going out the door,
24 right, in the beginning?

25 ATTORNEY VISHNY: Can you stop it? Please

1 run it back.

2 ATTORNEY SCHNEIDER: He played it until --
3 can you please note for the record?

4 ATTORNEY VISHNY: Yes. What's the play
5 point time?

6 ATTORNEY WEITZ: 13:50:38.

7 ATTORNEY VISHNY: Okay. We're going to
8 take that back.

9 ATTORNEY VISHNY: Okay. Now --

10 ATTORNEY WEITZ: 13:50:29.

11 Q (BY ATTORNEY VISHNY) At 13:50:29, this is Joe Thor,
12 is it?

13 A I -- like I said, I can't -- I don't see his face, I
14 don't know if that's him.

15 Q But this is you, correct?

16 A Yes.

17 Q Now you're holding something here in your left
18 hand?

19 A Maybe a bottle of beer. I don't know.

20 Q Maybe a bottle of beer? And you're holding something
21 in your right hand.

22 ATTORNEY VISHNY: One more frame forward
23 please. One more frame forward please. Okay. Now
24 we are at 13:50:29.

25 Q (BY ATTORNEY VISHNY) You've got something here in

1 your right hand, correct?

2 A Yes.

3 Q And this is what you claim was your e-cigarette that
4 you had in your hand?

5 A It looks like my e-cigarette.

6 Q What?

7 A It looks like my e-cigarette.

8 Q It looks to you like your e-cigarette. That's what
9 you're saying it is, correct?

10 A Yes.

11 Q Right after you punch somebody. So you've got
12 something in each hand, right?

13 A Yes.

14 Q You're running out. And when you run out --

15 ATTORNEY SCHNEIDER: Can we get the play
16 points marked?

17 ATTORNEY VISHNY: I did. 13:50:29.

18 Q (BY ATTORNEY VISHNY) Okay. And as you run out you
19 put your hands in your pockets right away, correct?

20 A Not that I remember.

21 Q Okay. Well let's refresh your memory.

22 ATTORNEY VISHNY: Can we just run this back
23 a couple of frames just because it's hard to see?

24 ATTORNEY WEITZ: Okay.

25 ATTORNEY VISHNY: Just ran it back two

1 frames to where we started.

2 Q (BY ATTORNEY VISHNY) Okay. Starting again at
3 13:50:29. Let's refresh your memory. You've got
4 items in two hands.

5 ATTORNEY VISHNY: Now let's show this.

6 Keep going.

7 Q (BY ATTORNEY VISHNY) Now you put your hands -
8 stopping at 13:50:30 - now you put your hands in your
9 pockets, right?

10 A I didn't see me. I didn't see myself put my hand in
11 my pocket.

12 Q All right.

13 ATTORNEY VISHNY: We're going to switch
14 recordings now.

15 THE COURT: Lights can stay off, Counsel?

16 ATTORNEY VISHNY: Yeah. We're just going
17 to go right to that.

18 Q (BY ATTORNEY VISHNY) So as you leave Luna, Joe Thor
19 is not down the block, he's right there in front of
20 you, isn't he?

21 A No. By the time me -- like I said, by the time me
22 and Phong got to the corner, he was way out, way up
23 the street already.

24 Q All right. Well, let's show that.

25 ATTORNEY VISHNY: And what's the exhibit

1 number?

2 ATTORNEY WEITZ: I think it's 97.

3 ATTORNEY VISHNY: 97.

4 Q (BY ATTORNEY VISHNY) I'm going to show you what's
5 been marked as Exhibit 97.

6 ATTORNEY VISHNY: I'm sorry everybody. I
7 know this is tedious to have to keep putting this in.

8 Okay. And we are starting Exhibit 97 at what
9 play point?

10 ATTORNEY WEITZ: 1:50:35.236.

11 ATTORNEY VISHNY: Okay. Go ahead.

12 Q (BY ATTORNEY VISHNY) That's Joe running, like you
13 said, pretty far ahead of you, right?

14 A Yup.

15 Q And now you see yourself next, correct, or rather --
16 so you run straight, it's Phong who runs into the
17 parking lot or is that you?

18 A I'm in the middle.

19 Q Okay.

20 ATTORNEY VISHNY: Let's run that back
21 please. And that was to 1:50:54.345. It's
22 actually --

23 ATTORNEY SCHNEIDER: Was his answer --
24 could the court reporter --

25 Q (BY ATTORNEY VISHNY) You're in the middle and Phong

1 is running behind you, correct?

2 A Yes.

3 Q So actually Phong who takes the slight detour into
4 the parking lot, not you?

5 A I don't know. I was in the middle.

6 Q Okay. Let's watch that again. You're in the middle,
7 so Joe Thor is way ahead of you guys, he's the
8 fastest, right?

9 A Yup.

10 Q You're number two.

11 ATTORNEY VISHNY: 1:50:42.538. Go ahead.

12 Q (BY ATTORNEY VISHNY) Okay. So you kind of hesitate
13 there for a second. That's you, right?

14 A Yes, in the middle.

15 Q Right here?

16 A Yes, that's me.

17 Q Running. Hands in the pockets, right?

18 A I don't know. I don't see it.

19 ATTORNEY VISHNY: Can you zoom in on that?

20 Why don't you run that back again to where -- where
21 did we start it before? It was four --

22 Q (BY ATTORNEY VISHNY) I'm going to show you starting
23 at 1:50:34.837. We'll show it to you. Okay. I'm
24 sorry, 1:50:43.939. Go ahead.

25 Let's watch you. That's you. Hands in pockets,

1 right? Do you see that?

2 A I guess if you said it was.

3 ATTORNEY VISHNY: You want to go to the
4 next one? We're going to give you another view of
5 it. What number is this? This is Exhibit 98 that
6 we're going to play.

7 Q (BY ATTORNEY VISHNY) All right. We're playing this
8 Exhibit at 1:50:42.574. And this is you right here,
9 right? Can we play it?

10 That's you running, right?

11 A Yes.

12 Q See that? Hands in your pockets, right?

13 A Same as Phong, yes.

14 Q Well, let's take a look at Phong's hands. Who knows,
15 maybe you both had your hands in your pockets. Go
16 ahead.

17 There's Phong's, his hands are out of his
18 pockets, aren't they?

19 A Yeah. When he grabbed his hat, yeah.

20 Q Right. He's running because he's grabbing his hat
21 because he got rid of his hat too, didn't he?

22 A Not that I can remember, but I remember he thrown
23 away his vest.

24 Q Okay. So he's grabbing his hat and his hands are out
25 of his pockets, correct?

1 A Yes.

2 Q He's not with his hands in his pockets, right?

3 A Like I said, after he fucking touched his hat, maybe
4 he put it back in his pocket.

5 Q Okay. So as I understand your story, just to wrap
6 this up, you get hit from behind, you punch a guy,
7 you're looking right at him, and within seconds you
8 run out with an e-cigarette in your hand, you had a
9 beer in one hand, an e-cigarette in your other hand.
10 You still managed to punch him and not leave a mark
11 on him, right?

12 A Yeah.

13 Q So you're not the shooter, that's what you told
14 everybody?

15 A Because I ain't the shooter.

16 Q Got you.

17 ATTORNEY VISHNY: No further question.

18 ATTORNEY SCHNEIDER: I'd ask the "got you"
19 to be stricken because it's not a question. I don't
20 think it's appropriate to comment like that.

21 THE COURT: Order it be stricken.

22 Miss Schneider, we're at noon, do you want to
23 recess before -- I'm assuming there is redirect?

24 ATTORNEY SCHNEIDER: Yes. I just don't
25 know how long I'm going to go, and I'm very -- if I

1 thought I was going to be 20 minutes I'd say let's go
2 but it might be longer than that.

3 THE COURT: Why don't we err on the side of
4 caution. I'd rather -- let's be ready to go at
5 1:00.

6 ATTORNEY SCHNEIDER: Mr. Groh may just have
7 to leave, but I don't think there is an issue with
8 that.

9 THE COURT: No. So let's excuse the jury.

10 Please rise.

11 (The jury was escorted out of the
12 courtroom.)

13 THE COURT: Okay. Parties can be seated.

14 So, Mr. Groh, you may not be here this
15 afternoon?

16 ATTORNEY GROH: I have a 1:30 in Green Bay
17 that was moved from yesterday at 3:00. I would
18 certainly be available after that.

19 THE COURT: I appreciate your availability.
20 If -- if you're needed, we can address it at that
21 time, but we'll cross that bridge in the event we
22 need to.

23 ATTORNEY VISHNY: Okay. There is just one
24 really quick thing. I'm sure it's an oversight.
25 Miss Schneider has advised me she intends to play

1 Chong Lee's statement, and I got an e-mail from her
2 about, I can't remember when, at least a week ago
3 saying she was going to send me the transcript and
4 I've never received it. I looked through all my
5 e-mails.

6 ATTORNEY SCHNEIDER: Okay. I'll look.

7 THE COURT: Could you do me a favor, send
8 me another e-copy and also please make me a hard
9 copy?

10 And then just do -- I'm just addressing from
11 this morning, there were some play points that we had
12 talked about at various recordings, one was from call
13 priority No. 18. There was an objection to the quote
14 "I just want to beat up", argued that it was unduly
15 prejudicial. The court overruled that objection.

16 Likewise on phone call No. 19, that was -- the
17 prior call was Chong Lee, Stephanie Thao, Tou Shoua.
18 Call No. 19 is with Chong Lee and Stephanie Thao.
19 There was an objection on Page 13 to it being
20 prejudicial. The court overruled that objection as
21 well.

22 I believe those are the only matters that we've
23 addressed outside of the jury. Is that your
24 recollection, Attorney Schneider, as well as what you
25 believe to be an accurate summary of our discussions?

1 ATTORNEY SCHNEIDER: Yes.

2 THE COURT: Attorney Vishny?

3 ATTORNEY VISHNY: Yes.

4 THE COURT: Okay. So I will see everyone
5 back here -- are there any more phone calls that we
6 will need to address?

7 ATTORNEY SCHNEIDER: Not for today.

8 THE COURT: Not for today. Okay. So we
9 will be ready to go at 1:00?

10 ATTORNEY VISHNY: Yeah. We'll be ready.

11 THE COURT: We are adjourned.

12 (Lunch recess.)

13 (The jury was escorted into the courtroom.)

14 THE COURT: Please be seated.

15 Attorney Schneider, you had some redirect; is
16 that correct?

17 ATTORNEY SCHNEIDER: Yes.

18 **EXAMINATION OF PAUR LEE**

19 **BY ATTORNEY SCHNEIDER:**

20 Q Mr. Lee, we've shown you -- we've shown you a couple
21 different -- you've seen the video from Luna, and
22 yesterday I showed you some photos of you with an
23 item in your hand taken at the Appleton Police
24 Department. Do you remember that?

25 A Yes.

1 Q And you talked about an item that you might have had
2 in your hand as you were walking out of Luna. What
3 was that item?

4 A I couldn't recall it, but I know that it's not a
5 gun.

6 Q Did you have a gun at all on this night?

7 A No. Not a gun or a knife or a stick. All I had was
8 an e-cigarette.

9 Q And you probably had some beer or bottle of beer at
10 some point too?

11 A Yes.

12 Q Do you remember the weather that night being very
13 cold?

14 A Yes.

15 Q If I told you it was about five degrees?

16 A No. I don't know, but it was pretty cold.

17 Q And when you went out of Luna, was your coat zipped
18 up or unzipped?

19 A Maybe unzipped.

20 Q Why did you keep your hands in your pockets?

21 A Everybody -- sometimes people do that when they
22 run.

23 Q Were you cold?

24 A Yes.

25 Q And that coat, you kept it, correct?

1 A Yes.

2 Q Kept it until the officers made contact with you on
3 Wednesday?

4 A Yes.

5 Q Didn't -- I mean you even wore it to work that
6 Wednesday?

7 A Yes.

8 Q Mr. Lee, do you mind just moving that microphone up
9 just a little bit? Okay. Thank you.

10 And you continued to go to work over the next
11 couple days?

12 A Yes.

13 Q You stayed in town?

14 A Yes.

15 Q Do you know where Chong went on Sunday after the
16 shooting?

17 A No, I do not.

18 Q When you were talking with sergeants at the Appleton
19 Police Department was there a time when you spoke to
20 him in Hmong?

21 A Yes.

22 Q Do you remember what you talked about when you talked
23 in Hmong?

24 A What the video showed, yes.

25 Q What was that about?

1 A When I told him that I don't want my brother to hate
2 me. That was it.

3 Q When you were running after you hear the noise, you
4 hear the pop or the gunshot, when you were running
5 out the door, were you paying much attention to who
6 was around you?

7 A No.

8 Q What was your focus on?

9 A My focus was, oh, shit, somebody dropped in front of
10 me. The next thing you know Phong pushed me out the
11 door and we all went out.

12 Q Is your focus on just getting out?

13 A I was shocked. I didn't know what to think of it.

14 Q This time when you came up from the basement and then
15 Phong and Josh were arguing, you tried to get in
16 between them, correct?

17 A Yes.

18 Q And then you -- I think yesterday you might have said
19 you were kind of trying to get Phong to go to the
20 dance floor?

21 A Yes.

22 Q And then that's about the time you remember you
23 thought you got hit?

24 A Yes.

25 Q So you turned around and then swung at Josh?

1 A No, that was just the story I told Thao.

2 Q Okay.

3 A About what the video said.

4 Q Okay. Did you take a swing at Josh?

5 A Yes.

6 Q Okay. And at some point was Phong arguing with
7 Josh?

8 A Yes, they had a little contact before I came up.

9 Q And that was in the area on top of those steps where
10 you go to the bathroom?

11 A Yes.

12 Q If you know, Paul, and I don't know if you're going
13 to know this, how long do you think passed from when
14 you came up to the top of the steps until the time
15 when you heard the pop, if you can even estimate?

16 A I don't know.

17 Q You told officers back on December 11th and December
18 12th you were not the shooter, correct?

19 A Yes.

20 Q You told them that more than once.

21 A Yes.

22 Q I think you told them that more than 40 times?

23 A I don't know 40 times or whatever but I don't
24 remember.

25 Q But you were always consistent in telling them

1 that?

2 A Yes.

3 Q During some of what were played on cross, there was
4 some statements or testimony about kind of going down
5 or being responsible for somebody else's issues or
6 actions. Do you remember telling Sergeant Leitzinger
7 or making a comment to him about that?

8 A Not that I can remember.

9 Q Do you even -- if I said the name Sergeant Brian
10 Leitzinger, do you know who that is?

11 A No, I don't.

12 Q And there was times when you were at the Appleton
13 Police Department in between time periods when
14 officers were talking to you when nobody was in the
15 room with you?

16 A Not that I could remember.

17 Q Okay.

18 ATTORNEY VISHNY: Judge, can we approach
19 the bench?

20 THE COURT: You may.

21 (Bench conference.)

22 Q (BY ATTORNEY SCHNEIDER) Do you remember, Paul, when
23 you were at the police department officers coming and
24 checking on you, see if you needed to go to the
25 bathroom, see if you needed a drink?

1 A No.

2 Q They might have done that?

3 A No. I had to knock on the door to get their
4 attention that I had to go to the bathroom.

5 Q Okay. And when you did that then an officer would
6 take you to the bathroom?

7 A Yes.

8 Q Do you remember telling one of those officers that,
9 I'm going to try and get this right, that you didn't
10 want to go down for something you didn't do?

11 A Like I said, I don't really remember it but maybe.

12 Q Would that be consistent with something you might
13 have said to them?

14 A Maybe. I don't know or remember.

15 Q You were asked some questions on cross about
16 statements you made during the interview, and I just
17 want to walk through a few of those.

18 ATTORNEY SCHNEIDER: I'm going to do Norka,
19 Page 96.

20 Q (BY ATTORNEY SCHNEIDER) And the officers asked
21 you --

22 ATTORNEY VISHNY: One second -- just one
23 moment please. Do you have a line number?

24 ATTORNEY SCHNEIDER: Line 13.

25 ATTORNEY VISHNY: Okay. Thanks.

1 Q (BY ATTORNEY SCHNEIDER) They asked you when you got
2 to Luna who you were going inside and outside with.
3 Do you remember that?

4 A Yes, I do.

5 Q Okay. And you told them you were with who at that
6 time?

7 A If I'm correct, I think I was with Phong and maybe
8 Joe and I think Tom.

9 Q Okay. And that was Tom Lee?

10 A Yes.

11 Q Okay. All four of you would go in or out to smoke?

12 A Yes.

13 Q Were there times, Paul, when you went outside with
14 those friends you might not have had a cigarette
15 yourself but you kind of hung out with them?

16 A Yes.

17 Q And were there times when you might have been out
18 smoking and they were just standing out there hanging
19 out with you?

20 A Yes.

21 Q Okay. Do you remember telling Sergeant Rabas at Luna
22 you didn't stay with the shooter?

23 A I don't remember saying that.

24 Q Okay. I'm going to direct you to the transcript,
25 Page 96, and in this transcript your name is

1 referenced Paul, and Sergeant Rabas is actually
2 misspelled, it says Ramos here, but can you look at
3 Line 27? That's you, a reference you're talking,
4 correct?

5 A I don't know, but whatever is on the transcript,
6 yes.

7 Q Okay. Then, Paul, why don't you read Line 27.

8 A Yeah. It's all on the video but I didn't stay with
9 the shooter.

10 Q That would have been a comment you made to Sergeant
11 Rabas at Norka?

12 A Something -- I don't remember but maybe.

13 Q Okay. And when you were talking to the officers at
14 the Appleton Police Department, you talked to them
15 about how it was hard for you to talk about your
16 brother. Do you remember that?

17 A Somewhat.

18 Q And do you remember telling them specific quotes of
19 what Chong said to you after the shooting?

20 A Not entirely.

21 Q Okay. Going to refer you to -- and this would have
22 been the first interview, so the interview that
23 started at 12:41 a.m. at Appleton Police Department.
24 We're going to look at Page 22, Line -- starting with
25 Line 965.

1 Mr. Lee, why we do all of that is because then
2 later we'll have a reference point.

3 But at Line 965 you're asked a question,
4 correct?

5 A Okay.

6 Q It starts with a Q, right?

7 A Yes.

8 Q And what was that question?

9 A Okay. He told you.

10 Q And how did you respond?

11 A He said he fucked up.

12 Q And in that you were talking about your brother
13 Chong?

14 A Like I said, I don't remember much, but maybe yes.

15 Q I'm going to direct you now to Page 26, the same
16 interview, starting at Line 1154 there is a question,
17 and what's the question there, Paul?

18 ATTORNEY VISHNY: I'm sorry. Page?

19 THE COURT: We have the page, Counsel?

20 ATTORNEY SCHNEIDER: Page 26.

21 ATTORNEY VISHNY: Yes.

22 Q (BY ATTORNEY SCHNEIDER) Line 1154 again. It's, okay
23 and what did he say to 'ya?

24 A Yes.

25 Q How did you respond, Paul?

1 A He just said, eh, Paul, I fucked up.

2 Q And that was about a conversation you had with Chong
3 after the shooting?

4 A Like maybe, yes.

5 Q Who brought up the phrase point blanked him, do you
6 remember, was it the officers or was it you?

7 A The officers.

8 Q I want to show you -- I'm now moving to the interview
9 at 11:58 a.m., Page 11. Starting with Line 448 there
10 is a question, and the question reads: Michael was
11 sleeping, okay, I want to clarify that. Where do you
12 think his jacket would be. How did you answer?

13 A Probably threw it in the dumpster or somewhere.

14 Q And the officer then says okay. Correct?

15 A Yes.

16 Q And then another officer says: Do you think there
17 was any -- do you think there was any blood splatter
18 on it. How did you answer?

19 A Maybe. I don't know.

20 Q The officer then says okay; is that correct?

21 A Yes.

22 Q And what do you say?

23 A He did say he point blanked him.

24 Q So you told the officers in that interview that Chong
25 made a comment to you that he point blanked him?

1 A Maybe. Like I said, I don't know, it's been a while.

2 I don't remember much about that.

3 Q Okay.

4 ATTORNEY VISHNY: I'm sorry. I couldn't
5 hear his answer.

6 ATTORNEY SCHNEIDER: It's been a while, he
7 doesn't remember much about that.

8 ATTORNEY VISHNY: Could we have just have
9 the reporter read it back?

10 THE COURT: Sure.

11 (Answer read back.)

12 Q (BY ATTORNEY SCHNEIDER) Okay. Then on cross - this
13 would be the last question I have about the
14 transcript, Mr. Lee - you were asked about the time -
15 this would be 11:58 a.m., Page 6, transcript - you
16 were asked about the time when you now talked to the
17 officers you told them about Chong and what he had
18 said to you about the shooting, you had not yet made
19 your written statement but they're talking to you
20 about going to get evidence or going to prove the
21 case, and on cross you were asked a question about
22 comments they were making to you or what you were
23 offering to do. I just want to direct you, Mr. Lee,
24 this would be the last sentence that starts on Line
25 236.

1 It's question, so it's coming from the officer,
2 and it says, so you got -- you got to help us; is
3 that correct?

4 A Yes.

5 Q How did you respond?

6 A Oh, man. Well the only evidence I can get if I was
7 straight up to Chong, if I went straight up to talk
8 to Chong and talked to him like, you know, Chong.

9 Q So you at that point had offered that you could go
10 talk to Chong about this, correct?

11 A Yes, on the transcript, yes.

12 Q When you wrote the written statement, Sergeant Thao
13 was not in the room. Do you recall that?

14 A Like I said, I don't remember.

15 Q Okay. If I told you that you told the officers about
16 one a.m. that Chong was involved and Chong made
17 comments to you about shooting Josh, do you think
18 that would be accurate?

19 A Like I said, if it was on the video, yes. But I
20 don't remember much about it. Like I said, I already
21 put this all behind me and I moved on.

22 Q And after you talked to them, you stayed at the
23 police department until about 1:30 in the afternoon.
24 Do you remember that?

25 A I don't remember what time, but it was pretty long,

1 yes.

2 Q And you don't know what the officers were doing or
3 who they were talking to in that time?

4 A No.

5 Q And they gave you a ride home, correct?

6 A Yes.

7 ATTORNEY VISHNY: One minute please.

8 You're talking about the very last one, right?

9 ATTORNEY SCHNEIDER: I'm talking about what
10 time he would have gotten home.

11 ATTORNEY SCHNEIDER: 1:17 instead of 1:30
12 then. I'm talking about the time they dropped him
13 off.

14 ATTORNEY VISHNY: Okay. The time they
15 dropped him off.

16 Q (BY ATTORNEY SCHNEIDER) I might have to make a small
17 correction, Mr. Lee. If I told you it was about
18 1:17, 13 minutes, that they dropped you off in the
19 afternoon, does that sound right?

20 A Like I said, I couldn't recall the time on that day
21 or the date.

22 Q Did you talk to Joe immediately after you got home?

23 A No, I didn't talk to Joe or Phong until like maybe
24 two months afterwards.

25 Q Okay. And I think you said yesterday after that

1 night of the shooting you didn't go back to Luna or
2 to Sharks?

3 A Never went back to downtown until now.

4 Q Do you think at Luna Chong was trying to protect
5 you?

6 A Like I said, I don't know.

7 Q You had gotten in an argument with Josh for a bit,
8 correct?

9 A Yes.

10 Q And Phong too?

11 A First it was Phong and Josh, yes.

12 Q Do you remember that letter Chong wrote to you?

13 A I didn't care to read it. I just threw it away.

14 Q Okay. Do you remember a reference yesterday where
15 Chong wrote that he wouldn't let no one touch you?

16 A What was that?

17 Q Do you remember a reference in that letter from Chong
18 that he wouldn't let no one touch you?

19 A Yes.

20 Q And you told the officers it -- let me ask you this
21 first, Mr. Lee. Yesterday, I want to say we played,
22 but we read transcripts of phone calls, remember
23 that?

24 A Yes.

25 Q And in one of those calls Chong was telling you what

1 to say when you came into court?

2 A Well, what about it?

3 Q In one of those phone calls was Chong discussing what
4 you should say when you came to court?

5 A Not that I can remember.

6 Q If the transcript shows that, you wouldn't dispute
7 the transcript?

8 A Yes.

9 Q Were there any other calls you had with Chong where
10 he was talking to you about what you should say?

11 A No.

12 Q And when the officers told you they had a video of
13 Luna, you didn't have any concerns about that, did
14 you?

15 A No.

16 Q You didn't feel it was going to show anything that
17 was going to hurt you at all, did you?

18 A No.

19 Q Or hurt Joe?

20 A No.

21 Q Or hurt Phong?

22 A No.

23 Q Might have been, what, if they had this on video
24 could have it have hurt Chong?

25 A I don't know.

1 ATTORNEY VISHNY: Objection. That's
2 speculative.

3 THE COURT: Hold on. Read the question
4 back please.

5 (Question read back.)

6 THE COURT: Sustain the objection.

7 ATTORNEY SCHNEIDER: I don't have any other
8 questions, Mr. Lee. Just one second though.

9 THE COURT: Attorney Vishny.

10 **EXAMINATION OF PAUR LEE**

11 **BY ATTORNEY VISHNY:**

12 Q Mr. Lee, when we were watching this kind of long part
13 of the tape this morning --

14 A Yes.

15 Q -- and generally during that interrogation by
16 Sergeant Thao and Sergeant Schira there was a lot of
17 reference about you being the youngest brother,
18 right?

19 A Yes.

20 Q What did that mean to you?

21 A Meaning what?

22 Q Being the youngest brother.

23 A That I'm the youngest.

24 Q And that you're supposed to take care of your mom
25 because you're the youngest, right?

1 A Yes.

2 Q And you're supposed to take care of your family, it's
3 obligation of the youngest child?

4 A I'm supposed to be the success, yes.

5 Q And just so I understand that, in your opinion, in
6 your personal culture, in Hmong culture, dating even
7 back to the old country, it's the responsibility of
8 the youngest child to take care of the parents,
9 correct?

10 A Yes.

11 Q And to be the success, right?

12 A Yes.

13 Q And that's an expectation in your family, right?

14 A Yes.

15 Q That no matter how many sorrows or how many problems
16 there are with older brothers or whatever trouble
17 they get into, you're supposed to succeed, right?

18 A Yes.

19 Q And so that if there's a problem in the family it can
20 go to other people but not to you, right?

21 A Yes.

22 Q And it would be the role of other people in the
23 family to protect you as well, wouldn't it?

24 A No.

25 Q Just your own role for you to be the success?

1 A Yes.

2 Q Now, I'm going to talk to you a little bit again
3 about this letter. 44.

4 Now, this part that's in yellow, this was read
5 before, right? Do you remember this?

6 A Yes.

7 Q I ain't even mad at you 'lil bro, that first
8 sentence, right?

9 A Yes.

10 Q Okay.

11 ATTORNEY VISHNY: You know, I want to read
12 it, but I -- I think I better get my glasses. The
13 joys of aging.

14 Q (BY ATTORNEY VISHNY) So as it was said yesterday, I
15 ain't even mad at you 'lil bro, don't worry about
16 nothing, I'll be all good in the end. You live to
17 die any ways. It's what you do in the end, that's
18 what counts. Right?

19 A Yes.

20 Q And then the very next sentence, just make sure you
21 take care of mom, right?

22 A Yes.

23 Q And you ain't even bad yet, bro, and then, and turn
24 over a new leaf to take care of her.

25 A Yes.

1 Q Right? So your brother was expressing concern about
2 you taking that role as the youngest in the family to
3 take care of your mother, right?

4 A Yes.

5 Q And while that may not be true of every Hmong family
6 in America, for your family this is true, right?

7 A Yes.

8 Q Now, you were saying kind of in the beginning when
9 the prosecutor was questioning you that, let's see,
10 you had told the story about trying to get Phong back
11 to the dance floor and being pushed behind. That was
12 just a story you made up for Officer Thao?

13 A No, that's the story.

14 Q That's the story. But you made up some other stories
15 too, right, in the beginning?

16 A Yes.

17 Q All right. And would it be fair to say if you're
18 being accused by the police of a murder and you going
19 away for life, you would want to tell everybody and
20 anybody in that police department that you didn't do
21 it, right?

22 A Yes.

23 Q And you would want to make sure everybody and anybody
24 there believed you, right?

25 A Yes.

1 Q And that anybody and everybody would be hopefully in
2 your opinion persuaded by you to let you out?

3 A I wouldn't persuade nobody, but like I said, I'm just
4 telling the truth.

5 Q So your truth that you're saying was to tell this to
6 people, right?

7 A Yes.

8 Q Okay. And you then were dropped off by the police.
9 Apparently you were successful because the police let
10 you go at the end of this?

11 A Yes.

12 Q And they dropped you off at home. Right?

13 A Yes.

14 Q 1:17 p.m., right?

15 A I don't remember the time or date, but yes.

16 Q But you never communicated with -- let's see, it was
17 three or four months yesterday when you testified,
18 but now you think it's a couple of months that you
19 didn't talk to Joe?

20 A Like I said, I don't remember much, but it was a
21 couple months.

22 Q Okay. And never saw him during that time.

23 A Joe or Phong?

24 Q Either one. You claim you never saw --

25 A Yes.

1 Q And right after you got home, you called a different
2 brother of yours named Hu, right?

3 A Yes, because my family had been there and I was
4 locked out of my apartment.

5 Q Okay. So you just called so you could get back into
6 your apartment?

7 A Yes.

8 Q That's what you're saying?

9 A Yes.

10 ATTORNEY VISHNY: Nothing further.

11 THE COURT: Any follow-up, Attorney
12 Schneider?

13 ATTORNEY SCHNEIDER: No.

14 THE COURT: Ladies and gentlemen of the
15 jury, any questions for consideration?

16 (No response.)

17 THE COURT: May I have counsel approach
18 just for one second?

19 (Bench conference.)

20 ATTORNEY SCHNEIDER: Judge, we have no
21 additional questions for Mr. Lee at this time, but
22 the parties would be entering a stipulation that the
23 preliminary hearing in this matter occurred on
24 February 12th, 2014.

25 THE COURT: Okay.

1 ATTORNEY VISHNY: Judge -- I'm sorry.

2 Judge, there's something I actually forgot to ask.

3 ATTORNEY SCHNEIDER: Just wait.

4 ATTORNEY VISHNY: Yeah. I'm sorry.

5 THE COURT: Go ahead.

6 ATTORNEY VISHNY: My mistake.

7 Q (BY ATTORNEY VISHNY) Now, a few minutes ago Miss
8 Schneider was asking you about whether you were the
9 first person to bring up the words point blank,
10 correct?

11 A Yes.

12 Q And what she pointed out to you was when you were at
13 the police department, shortly before being taken
14 home, you are the person who brought up the phrase
15 point blank for the very first time?

16 A No, they have brought up the phrase point blank.

17 Q The police had actually, right?

18 A Yes, because I told them I punched the guy and they
19 said, no, you had not punched the guy because there
20 was no bruises whatsoever at the autopsy, he had been
21 point blank at range.

22 Q Okay. So this transcript of your interview when
23 Rabas and Thao interrogated you is actually Rabas
24 brings it up for the first time and then says someone
25 else is going to come up for no reason, even though

1 he is arguing with you and Phong and he's pissed off
2 at you guys, some guy for no reason is just going to
3 come up and shoot him in the side of the head in
4 point blank range, right?

5 A Um-hum.

6 Q Is that yes?

7 A Yes.

8 Q And that's when you then say I don't know who the
9 shooter is, correct?

10 A Yes.

11 Q And his response, Sergeant Rabas's response to you
12 is, Paul, that doesn't make any sense, right?

13 A Yes.

14 Q And you're kind of angry at that point because in
15 your next sentence you use the F bomb, right?

16 A Yes.

17 Q And that was right after Sergeant Rabas had said that
18 it didn't make any sense to punch a big guy that's
19 like six feet, 225 or 230 pounds, who's pissed off
20 that you're going to step back. Do you remember that
21 too?

22 A I'm sorry. What was the question?

23 Q All right. I'll come back up there with the
24 transcript. Same page. Line 15.

25 Right before Sergeant Rabas was talking about

1 point blank and bringing that up, he said to you, so
2 you're going to tell me you're going to punch a big
3 dude like that that's six feet, 225, 230, who's
4 pissed off. You're going to punch him and you're
5 going to step back and he's not going to do anything
6 to you after you punched him? That's what Sergeant
7 Rabas said, right?

8 A Oh, no. I was worried he was going to charge at me
9 after that.

10 Q But this is what Sergeant Rabas said when he was
11 interrogating you, right?

12 A I guess.

13 Q So you were worried the guy was going to charge after
14 you, right?

15 A Yes.

16 Q So you were looking at him the whole time, right?

17 A Yes, I was looking at him.

18 Q You were totally keeping him in your vision so you
19 could exactly see what would be going on, right?

20 A Not entirely.

21 Q Oh, okay. And you say you didn't see who did the
22 shooting, right?

23 A No, I didn't know.

24 ATTORNEY VISHNY: Okay. Nothing further.

25 THE COURT: Any follow-up, Attorney

1 Schneider?

2 ATTORNEY SCHNEIDER: No.

3 THE COURT: Based on those questions, any
4 questions from the jury?

5 (No response.)

6 THE COURT: Okay. Very good.

7 Then, Attorney Schneider?

8 ATTORNEY SCHNEIDER: I'll address it, yes,
9 we'll just keep him.

10 THE COURT: No. I understand you may have
11 recall at some point, correct?

12 ATTORNEY SCHNEIDER: Yup.

13 THE COURT: Reserving the right to recall.

14 Then, Mr. Lee --

15 ATTORNEY MAIER: Your Honor, I have the
16 next couple witnesses and I call him now.

17 THE COURT: Okay.

18 (Oath administered to witness.)

19 THE WITNESS: Yes.

20 THE CLERK: Please state your full name and
21 spell it for the record please.

22 THE WITNESS: Mitchell Roepcke,
23 M-I-T-C-H-E-L-L, R-O-E-P-C-K-E.

24 THE COURT: Okay. You may be seated, sir.

25 Mr. Maier, then whenever you're ready, sir.

1 ATTORNEY MAIER: Thank you.

2 **EXAMINATION OF MITCHELL ROEPCKE**

3 **BY ATTORNEY MAIER:**

4 Q Good afternoon, Mr. Roepcke.

5 A Afternoon.

6 Q In December of 2013, what did you do for a living?

7 A I owned the Sharks Club billiard room.

8 Q And where was the Sharks billiard room and club
9 located?

10 A 318 West College Avenue.

11 Q Downtown Appleton?

12 A Yes.

13 Q If -- for persons on College Avenue, how would they
14 get into the pool hall?

15 A There was two accesses, there was a front access in
16 the Park Central building or there was a rear
17 entrance also.

18 Q And from College you would walk -- was it at street
19 level, up, down?

20 A Our business was in the lower level of the
21 building.

22 Q In the middle part of December of 2013, and I believe
23 it would have been on or about the 10th or 11th, did
24 you find anything unusual at Sharks pool hall?

25 A Yeah. I believe it was the Wednesday evening I was

1 there later in the evening. I went into the -- we
2 have two sets of bathrooms. There is an older set
3 and new set that I built when we built it. In the
4 newer bathrooms, which is standard toilets, I did
5 find some bullets in the basin of the toilet in the
6 water.

7 Q Okay. Are you a hunter or someone who's familiar
8 with firearms?

9 A Yes.

10 Q Were these fired or unfired bullets?

11 A They were live rounds.

12 Q Okay. Mr. Roepcke, sir, I'm going to show you, this
13 is a board that has six images on it, 45 through 50.
14 If you need to, feel free to stand up or take a step
15 down to look.

16 In looking at Exhibit 46, are you able to tell
17 me what that is?

18 A That's in the billiard room, that's the back right as
19 you come into the front entrance, that's the two
20 newer bathrooms that were built. First door is a
21 men's room, second door was the ladies room.

22 Q So as we're -- as we're looking at it, you said the
23 first door, that's the door to the right, is the
24 men's room?

25 A Yeah.

1 Q And then 47, is that then walking or kind of facing
2 into that men's restroom?

3 A Yes.

4 Q And these are -- you said these are the new
5 bathrooms?

6 A Yup. Ones when I remodeled the business I put these
7 in. There was another set that was there in the
8 original building.

9 Q And just one toilet in this new?

10 A In the men's room we have one toilet and two
11 urinals.

12 Q Okay. And it was in that toilet that you found the
13 live rounds?

14 A Yup.

15 Q Do you recall how many there were?

16 A I don't remember exactly. I didn't count them. Five
17 to seven.

18 Q Okay. What did you do when you -- actually, where
19 were they when you found them?

20 A They were actually in the bottom of the toilet in the
21 water. And then when I -- I found them, I got my bar
22 manager was Phil Moore and I told him to grab some
23 cleaning gloves and go in there and retrieve them.

24 Q Benefits of ownership, I suppose?

25 A Yes.

1 Q And did he do that?

2 A Yes, he did.

3 Q What did you have him do with the bullets that he
4 retrieved?

5 A We pulled them out, we put them in a Ziploc bag, and
6 I think he asked me what I should do with them. I
7 had no idea it would be connected to something like
8 this because it was like four days later, so I said,
9 well just throw them away then. I thought some kids
10 just dropped them in there maybe or something, so I
11 had no idea so we just put them in the garbage in the
12 billiard room.

13 Q In one of the garbage cans just in the general
14 billiard area?

15 A Behind the bar it was I think.

16 Q Okay. Now, is it -- is it safe to say that you look
17 in the bottom of the bowl, you see bullets, but
18 you're not taking an exact count or photographs or
19 anything like that, right?

20 A No.

21 Q And so then Phil just puts a glove on and scoops them
22 out and that's the end of it more or less as this
23 happens?

24 A Right.

25 Q Okay. How long had you owned -- I guess for what

1 period of time did you own Sharks Club?

2 A I owned it for 19 years, so it was like at that point
3 it would have been 17 years I owned it. I started in
4 1995.

5 Q And from 1995 until December 11th of 2013 had you
6 ever found bullets in the toilet there?

7 A No.

8 ATTORNEY MAIER: Thank you. That's all the
9 questions I have for this witness.

10 THE COURT: And, Mr. Gatton, are you
11 questioning, sir.

12 MR. GATTON: Yes.

13 THE COURT: Very good. Whenever you're
14 ready.

EXAMINATION OF MITCHELL ROEPCKE

16 BY MR. GATTON:

17 Q So, Mr. Roepcke, on Wednesday, December 11th, you
18 were working that day, correct?

19 A I don't know if -- I was there. I wasn't bartending
20 but I always would frequently check in on my business
21 or whatever.

22 Q Okay. And you went to use the restroom at that
23 point?

24 A Yes.

25 Q The new men's restroom?

1 A Yes.

2 Q And that's where you saw the bullets in the toilet
3 bowl?

4 A Yes.

5 Q And there's only one toilet in that room, correct?

6 A Yes.

7 Q Now, Sharks was open every day?

8 A Correct, seven days a week.

9 Q And that was from five until bar close?

10 A Correct.

11 Q Okay. Now, no one saw these bullets on Sunday
12 night?

13 A No.

14 Q Or Monday night?

15 A No.

16 ATTORNEY MAIER: Object. That calls for
17 speculation. He doesn't know what anybody else saw.

18 Q (BY MR. GATTON) You weren't aware that anyone saw
19 these --

20 A No.

21 Q -- on Sunday?

22 A No.

23 Q Monday?

24 A No.

25 Q Tuesday?

1 A (Shaking head side-to-side.)

2 Q So it wasn't until Wednesday that you saw them?

3 A Correct.

4 Q And you didn't think that they were related to the
5 Luna shooting.

6 A It didn't occur to me.

7 Q Because you thought that some kids had thrown them in
8 there.

9 A Yeah. Because it was so many days later, yeah.

10 Q Right. And you ultimately have your bar manager
11 retrieve them and throw them out?

12 A Um-hum.

13 Q Correct?

14 A Correct.

15 Q Now, the bathrooms, they were cleaned on a regular
16 basis, correct?

17 A Correct. My employees were supposed to clean them
18 every evening before close, and on Tuesdays I would
19 be there during the day. We did an extensive
20 cleaning on Tuesdays also, every Tuesday.

21 Q Okay. And when you do the extensive cleaning, that
22 of course includes the bathrooms, correct?

23 A Correct.

24 MR. GATTON: Nothing further, Your Honor.

25 THE COURT: Any follow-up, Attorney Maier?

1 ATTORNEY MAIER: No. Thank you.

2 THE COURT: Ladies and gentlemen, any
3 questions for consideration?

4 Okay. If counsel could approach.

5 (Bench conference.)

6 THE COURT: And the question, sir, is does
7 Sharks have a camera?

8 THE WITNESS: We had a camera system, it
9 was an older one, but it was not active at that
10 time.

11 THE COURT: Thank you, sir.

12 Does that prompt any follow-up questions, Mr.
13 Maier?

14 ATTORNEY MAIER: No.

15 THE COURT: Mr. Gatton?

16 MR. GATTON: No, Your Honor.

17 THE COURT: Thank you, sir. You may be
18 excused.

19 THE WITNESS: All right. Thank you.

20 THE COURT: Mr. Maier?

21 ATTORNEY MAIER: Your Honor, the State's
22 next witness is Philip Moore.

23 THE COURT: Sir, if you would please remain
24 standing, the clerk will swear you in.

25 MR. MOORE: No problem.

1 THE CLERK: Please raise your right hand.

2 (Oath administered to witness.)

3 THE WITNESS: Yes.

4 THE CLERK: Please state your full name and
5 spell it for the record please.

6 THE WITNESS: My name is Philip J. Moore.

7 You need my middle name also?

8 THE COURT: That's okay, sir.

9 THE WITNESS: Okay. It's P-H-I-L, one L,
10 I-P, M-O-O-R-E.

11 THE COURT: Thank you, Mr. Moore. You may
12 be seated.

13 Mr. Maier, your witness, sir.

14 **EXAMINATION OF PHILIP J. MOORE**

15 **BY ATTORNEY MAIER:**

16 Q Mr. Moore, how are you doing today?

17 A Just fine.

18 Q I want to ask you some questions about a period of
19 time that you worked at Sharks Club. You were the
20 bar manager there; is that correct?

21 A That is correct.

22 Q And roughly how long start to finish were you the bar
23 manager at Sharks?

24 A I'll say from approximately 2006 until it changed
25 hands in 2014.

1 Q So you would have been employed in that -- that job
2 in December of 2013 then?

3 A That would be correct.

4 Q On a Wednesday night, and I realize you may not
5 recall the exact night of the week, but do you recall
6 a situation where Mitch Roepcke was there and found
7 something in a toilet in the -- I'll call them the
8 newer men's --

9 A Yup.

10 Q -- restroom?

11 A Yes, I do recall that.

12 Q And what was it that Mitch found?

13 A Mitch discovered some bullet -- what appeared to be
14 like smaller .22 caliber bullets in the bottom of the
15 drain trap itself.

16 Q And what happened when he found those?

17 A He told me to go remove them, so I proceeded to grab
18 a rubber glove, remove them out of the bottom of the
19 toilet. I believe I either placed it inside of a
20 Ziploc baggie or inside of one of our blue sanitary
21 napkin Baggies and threw them away.

22 Q At the time that this is happening, is there anything
23 -- nothing -- nothing comes to mind that they might
24 be involved in anything?

25 A No, not at that time. I mean I was aware of the

1 incident that happened at Luna, but at the time, I
2 never really thought too much of it.

3 Q Okay. In the period of time that you worked as bar
4 manager at Sharks Club, had you ever yourself or been
5 made aware of someone finding unfired bullets in a --
6 anywhere in the club?

7 A Not previous to that or after that.

8 Q Okay. I want to ask you a little bit about some of
9 the practices I guess at the Sharks Club.

10 A Okay. No problem.

11 Q And Sharks Club was open seven days a week; is that
12 correct?

13 A That is correct, from five p.m. until bar close.

14 Q And so bar close is roughly two a.m.?

15 A Yes, depending on the evening. Sometimes it was
16 12:30 and there is no one in there, shut'er down.

17 Q Did you work -- did you have a set schedule or did
18 you work certain hours?

19 A I did kind of bounce around a little. Predominantly
20 I was a Monday, Tuesday open to closer, Wednesdays
21 and Friday and/or Saturday, sometimes Sunday too. I
22 mean, being the manager you got to fill in those
23 hours so --

24 Q Sure. And did you -- the days that you would, I
25 would say, emphasize, Monday, Tuesday, and I think

1 you said --

2 A Wednesday.

3 Q Wednesday and then Saturday?

4 A Friday and/or Saturday.

5 Q Are those -- were those the busier nights?

6 A Fridays and Saturdays were definitely one of the
7 stronger ones. We had an in-house league on
8 Thursdays also which would have decent business.

9 Q Sundays and then the first part of the week maybe not
10 so busy?

11 A No.

12 Q Correct? That's correct?

13 A That is correct.

14 Q Okay. Bar time comes, whether it's 12:30 on a
15 Monday --

16 A Yup.

17 Q -- or you're kicking people out at 2:00 on a
18 Saturday, what does the staff do when you're the
19 manager there?

20 A What they are supposed to do when they're cleaning
21 duties, brush all the pool tables, wipe down all of
22 our red cocktail tables, wipe down our bar, sweep and
23 mop behind the bar, go through all the bathrooms,
24 wipe down counters and sinks, check the toilets,
25 clean those, sweep and mop the floors in the

1 bathrooms, and that would pretty much be all of it.

2 Q Now --

3 A I'm sorry, also count the tills, balance them and put
4 them in the safe.

5 Q Aside from the money part at the end you just listed,
6 did you list in order that was more or less top to
7 bottom priority?

8 A I would definitely say that was my personal way of
9 doing it. It was kind of not set in stone of exactly
10 what, you know, you have to do this step, this step,
11 this step. As long as they're all completed by the
12 end of the evening, it was acceptable.

13 Q Okay. Now, I guess may seem like kind of a silly
14 question, but can you explain what you mean -- what
15 your expectations were when you say clean the
16 toilets?

17 A Okay. Basically make sure that there's no, pardon my
18 phrasing, floaters sitting in there. Some people
19 tend not to flush the toilets, you know, spit on top
20 of urinals, you know, wiping down the toilet seats,
21 just making them presentable and usable for the
22 following day.

23 Q So we're not talking like brushes and chemicals
24 and --

25 A Predominantly super deep cleans were done on

1 Tuesdays, but then again, obviously it was spot
2 checking, you know, as far as some people's
3 cleanliness you may have to use a brush on an
4 evening.

5 Q Okay. Were you working in the weekend before those
6 bullets were found?

7 A The weekend before? Yes. I would imagine I probably
8 was. Can I recall the exact dates that I worked on
9 the weekend prior, I know I did not work the Saturday
10 evening of the incident. I do believe I may have
11 worked that Sunday. Monday, Tuesdays, like I said,
12 was always me. I know I worked Monday and Tuesday
13 and the following Wednesday.

14 Q So that would have been set -- you're off December
15 7th then, that Saturday?

16 A Yes.

17 Q Or at least you weren't working that night?

18 A Correct.

19 Q And then you just listed basically working Sunday the
20 8th through Wednesday of the 11th when these bullets
21 were found?

22 A Correct.

23 Q I realize it's been over two years.

24 A Yes.

25 Q And I realize that maybe one person's mess is not

1 necessarily another person's.

2 A Yes.

3 Q And I -- but I also realize that you've talked with
4 the police and maybe some other people about that
5 stretch of five days --

6 A Yeah.

7 Q -- so you may have some recollection.

8 Was there anything unusual that went on, and
9 I'll -- a real mess in a toilet or someone getting
10 physically ill someplace that required an unusual
11 amount of attention in those days, Sunday, Monday,
12 Tuesday at that men's bathroom?

13 A Not to my recollection. I definitely would -- being
14 a manager held myself to higher standard, so I
15 believe I do a little bit more than people so I would
16 say that I've done a thorough job on those days.

17 Q Okay. And you -- you don't recall seeing any unfired
18 bullets Sunday the 8th, Monday the 9th, or Tuesday
19 the 10th, correct?

20 A No, sir, I do not recall that.

21 Q And then Mitch found them, that would have been
22 before that bathroom would have been cleaned at the
23 end of the shift on the 11th?

24 A That would be correct.

25 ATTORNEY MAIER: All right. Thank you, Mr.

1 Moore. I appreciate it.

2 THE WITNESS: No problem.

3 THE COURT: Defense, any questions?

4 ATTORNEY WEITZ: Yes. Thank you, Your
5 Honor.

6 **EXAMINATION OF PHILIP J. MOORE**

7 **BY ATTORNEY WEITZ:**

8 Q So, Mr. Moore, the bullet, let's start with when they
9 were found and work our way back. So they were found
10 by Mitch Wednesday night, that would have been
11 December 11th, right?

12 A That would be the date of the 11th on that Wednesday,
13 correct.

14 Q And he was the one that actually found them, you
15 didn't discover them yourself, right?

16 A That is correct. I was working behind the bar at
17 that time.

18 Q And he probably came out and told you, you know, I
19 found these, you go take care of them?

20 A Yes.

21 Q Because that's part of the responsibility of being an
22 employee, I guess?

23 A That would be correct.

24 Q And when you went and looked at them, they were just
25 kind of laying in the bottom of the bowl, right?

1 A That is correct.

2 Q Okay. So you retrieved them and you put them in a
3 plastic bag and then just threw them in the garbage,
4 right?

5 A That is correct.

6 Q Because you didn't even -- as you testified before,
7 you were aware of the incident at Luna, right?

8 A Yes.

9 Q But you didn't think that it was connected because
10 this was four days later?

11 A Yes, that would be correct.

12 Q And you testified that the bathrooms at Shark's
13 Club -- which is open every day of the week, right?

14 A That is correct.

15 Q And every night you go through and you clean them,
16 someone makes sure that the toilets are flushed,
17 right?

18 A That is correct.

19 Q And kind of as you described, you want to make sure
20 that there's nothing in there?

21 A Yes.

22 Q So you're looking to flush anything that might be
23 left behind away or get rid of any messes, right?

24 A That is correct.

25 Q And then if there is additional, you know, stuff on

1 the toilet seat or spills or things like that, you
2 wipe all that down as need be?

3 A Yes, that is correct.

4 Q Okay. And you testified that you were actually
5 working, you believe, that Sunday after the incident
6 at Luna, right?

7 A As I was going to say, I'm not absolutely positive I
8 worked that Sunday, it is potential that I did.

9 Q Okay.

10 A But as far as Tuesday and Monday, I am absolutely
11 sure that I worked.

12 Q So Monday and Tuesday you definitely were there,
13 right?

14 A Yes. That was definitely a regular scheduled day for
15 me.

16 Q And you said that you hold yourself to a higher
17 standard, I guess, than your employees, I think is
18 what you said?

19 A As a manager, I think managers should be that way.

20 Q Right. Absolutely. So you make sure that all this
21 is done every night?

22 A Correct.

23 Q And so you were working Monday and Tuesday and you
24 definitely went through and performed those checks
25 that you testified about earlier?

1 A Yes, sir.

2 Q So you definitely would have gone through the
3 bathroom and looked and saw if there was anything in
4 the toilet, right?

5 A Most definitely, yes.

6 Q And you didn't see anything maybe on Sunday if you
7 were there, you can't quite recall, but definitely on
8 not on Monday or Tuesday?

9 A Definitely not on Monday or Tuesday.

10 Q Before they were found then the following night.

11 A You are correct, sir.

12 Q Okay. And the way that you saw these bullets, if
13 they were there prior to that, you definitely would
14 have seen them?

15 A Oh, most definitely.

16 Q Okay.

17 ATTORNEY WEITZ: Nothing further. Thank
18 you.

19 THE COURT: Any redirect, Mr. Maier?

20 ATTORNEY SCHNEIDER: No. Thank you.

21 THE COURT: Ladies and gentlemen of the
22 jury, any questions for consideration?

23 (No response.)

24 THE COURT: All right. Then, Mr. Moore,
25 thank you for your testimony.

1 THE WITNESS: I may be excused then?

2 THE COURT: Yes, sir.

3 THE WITNESS: Thank you.

4 ATTORNEY MAIER: Your Honor, the State's
5 next witness is Sergeant Brian Leitzinger.

6 THE COURT: If you would please remain
7 standing, sir, the clerk will swear you in.

8 (Oath administered to witness.)

9 THE WITNESS: I do.

10 THE CLERK: Please state your full name and
11 spell it for the record please.

12 THE WITNESS: Brian Leitzinger,
13 L-E-I-T-Z-I-N-G-E-R.

14 THE COURT: Mr. Maier, your witness, sir.

15 ATTORNEY MAIER: Thank you, Your Honor.

16 **EXAMINATION OF BRIAN LEITZINGER**

17 **BY ATTORNEY MAIER:**

18 Q Good afternoon, Sergeant.

19 A Good afternoon.

20 Q How are you employed, Mr. Leitzinger?

21 A I'm a police officer with the City of Appleton and
22 currently in the capacity of a detective for the last
23 seven years.

24 Q How long have you worked for the Appleton Police
25 Department in total?

1 A Just over 19 years.

2 Q Did you have law enforcement experience prior to
3 working for the Appleton Police Department?

4 A Yes, I did.

5 Q Can you describe for the jury what that was please?

6 A Prior to being hired by Appleton Police Department I
7 was a part-time deputy for Lafayette County Sheriff's
8 Department in the southwest part of the state, and I
9 also did nine years active and international guard in
10 the Air Force as a security policeman, law
11 enforcement specialist.

12 Q Were you working in the capacity of a detective for
13 the Appleton Police Department on Wednesday, December
14 11th into Thursday, December 12th, 2013?

15 A Yes, I was.

16 Q You were part of the group investigating the fatal
17 shooting at Luna Lounge in downtown Appleton; is that
18 correct?

19 A Yes, I was.

20 Q Was there a point where an individual named Paul Lee
21 was in a booking room?

22 A Yes, there was.

23 Q And did you have some interaction with Mr. Lee while
24 he was in the booking room on December 12th?

25 A I had some interaction with Mr. Lee when he was

1 transported to the Appleton Police Department from
2 his place of employment and also in the booking room,
3 one of the booking rooms. My contact with him
4 continued as the handcuffs were taken off and he was
5 free to roam in a holding room at the police
6 department. I had intermittent contact with Mr. Lee
7 at various times to check on him to see if he needed
8 anything such as a restroom, any food or water.

9 Q You weren't one of the people that was actually
10 interviewing him in a formal sense though, correct?

11 A Correct.

12 Q That was done by different detectives?

13 A Yes.

14 Q Was there a time that he accepted the request, I
15 guess, for water or anything else?

16 A Yeah. He at one point asked for some water. He also
17 asked for some tissues to blow his nose. At one
18 point he asked if he could smoke a cigarette.
19 Eventually I -- I told him I didn't have any
20 cigarettes but he provided me information that he had
21 an e-cigarette in his coat pocket and eventually I
22 gave that to him so he could use that.

23 Q And then he used that inside the booking room?

24 A Correct.

25 Q Was there a point that he said anything to you

1 related to things he may have been interviewed about
2 but without any prompting from you?

3 A Yes.

4 Q Could you describe to the jury what that was
5 please?

6 A It was during my last contact with him. We were
7 having a small discussion about his e-cigarette, and
8 unprovoked he told me that he -- not exactly but said
9 this thing is all messed up. I don't want to go to
10 jail for other people's cases.

11 Q When you are -- after hearing this, what did you
12 do?

13 A I basically just told him that we're seeking the
14 truth, and shortly after that I closed the door and I
15 made contact with other detectives just to let them
16 know what -- what Mr. Lee had said.

17 Q Okay.

18 ATTORNEY MAIER: That's all the questions I
19 have for you, Sergeant. Thank you.

20 THE COURT: Defense?

21 ATTORNEY VISHNY: Yeah.

22 **EXAMINATION OF BRIAN LIETZEINGER**

23 **BY ATTORNEY VISHNY:**

24 Q So you weren't assigned to interview Paul Lee,
25 right?

1 A Correct.

2 Q And he didn't seem too happy at the time to be where
3 he was located, fair?

4 A That's fair.

5 Q And he just started talking to you about this trying
6 to convince that you he didn't have anything to do
7 with what he was under arrest for, right?

8 A I'm sorry. What's your question, ma'am?

9 Q He was just then trying to talk to you and say, you
10 know, I didn't have anything to do with this or I'm
11 here for somebody else, that was just him kind of
12 spouting off, so to speak?

13 A I would agree with that.

14 Q All right. Now, you had not a lot but some other
15 involvement with regard to this investigation,
16 right?

17 A Yes.

18 Q And one of the things that you were involved with was
19 you were present at the time that Chong Lee was
20 arrested for this?

21 A That's correct.

22 Q And that was on the morning of December 12th?

23 A That's correct.

24 Q What time was that?

25 A I don't recall.

1 Q And you were present -- there was a search that was
2 conducted at the house at the time of Mr. Lee's
3 arrest, right?

4 A That's correct.

5 Q The only other people who were at his home were his
6 mother and his sister Jenny?

7 A For sure his mother and Jenny, and I believe that's
8 all that was there.

9 Q And there wasn't any gun or any bullets or anything
10 found in the house?

11 A Not to my knowledge.

12 Q You also participated in this case by being involved
13 in an interview with a witness named Joe Thor?

14 A Correct.

15 Q And when you went to interview Mr. Thor, that
16 interview took place in your squad car.

17 A Actually Sergeant Rabas's unmarked squad car.

18 Q Okay. I didn't know whose squad car it was. So you
19 were in the passenger position?

20 A On the way there, but when we were interviewing Mr.
21 Thor, Sergeant Rabas was sitting in the driver's
22 seat, Mr. Thor was in the front seat, and I was in
23 the back seat behind the driver.

24 Q And that conversation went on for a while, and at
25 some point Mr. Thor, Joe Thor left and went back into

1 his own house.

2 A Correct.

3 Q And he did not permit you or Sergeant Rabas to come
4 into the home with him at any time?

5 A I don't -- I guess I wouldn't characterize it as he
6 wouldn't permit us to. We just asked if he would go
7 into the -- his residence to --

8 Q I'm sorry. I didn't mean to interrupt you. I
9 thought you were done.

10 A We asked if he would go into his residence to look
11 on, I believe it was his brother's cell phone, for a
12 phone number.

13 Q Okay. But even before that when the interview first
14 started, it was a pretty cold day that you went to
15 interview him, wasn't it?

16 A It was.

17 Q And he didn't want to have the interview take place
18 inside his home, he wanted it to be in your squad
19 car?

20 A When we arrived he was already outside, and I guess I
21 don't recall if we asked if we could step in or
22 not.

23 Q But certainly you weren't going to try to interview
24 him outside in very cold weather?

25 A Correct.

1 Q Lot warmer in a house, a house would be the warmest
2 generally unless it's freezing in someone's house,
3 right?

4 A I would agree it would be the most comfortable.

5 Q And the squad car would come after that.

6 A Correct.

7 Q He went inside the house to get something, and the
8 only question I want to ask about that is how long in
9 your memory was he gone for?

10 A I believe it was only for about four minutes.

11 Q Okay. Were you timing it?

12 A No, that's -- that time comes from looking at the --
13 my digital -- my handheld digital recorder files and
14 the date time stamp that's on those files.

15 Q Now, your one other -- one other duty that you were
16 involved in here was to go to Sharks Club to take a
17 look and determine whether or not there was anything
18 that could be in a sewer line from the toilet in the
19 men's bathroom, right?

20 A Kind of, yes. May I explain?

21 Q Sure.

22 A The day I was at Sharks Club, I was there as they
23 were emptying the holding tank, I guess is the proper
24 term for the sewage, so in terms of the sewer line, I
25 guess I'd have to say no, I wasn't present for that

1 or aware of that, but the holding tank was emptied in
2 my presence.

3 Q In other words, and I may have said it wrong when I
4 said sewer line, but there was looking to see whether
5 or not an object -- whether or not, frankly, a gun
6 had been flushed down the toilet, right, that was the
7 purpose of the search?

8 A In the holding tank.

9 Q In the holding tank, whether it could be found when
10 you get back behind the toilet, not that I'm a
11 plumber and I really know what I'm talking about, but
12 just the general idea even if I'm using the wrong
13 terminology?

14 A I guess if you're asking me about the plumbing line
15 from the toilet to the holding tank?

16 Q Yes.

17 A I can't comment to that. But the holding tank that
18 was eventually emptied in my presence, I could see
19 down inside that holding tank.

20 Q And there was never any gun found there?

21 A No.

22 ATTORNEY VISHNY: I don't have anything
23 further.

24 THE COURT: Any redirect?

ATTORNEY MAIER: No. Thank you.

1 THE COURT: Ladies and gentlemen, any
2 questions?

3 Counsel could please approach.

4 (Bench conference.)

5 THE COURT: Just a point of clarification.
6 When you were referencing the holding tank, you were
7 referencing a -- more of a centralized holding tank,
8 not the toilet's specific holding tank, correct?

9 THE WITNESS: That's correct, Your Honor.

10 THE COURT: Okay. Thank you.

11 Does that prompt any follow-up questions,
12 Attorney Schneider?

13 ATTORNEY SCHNEIDER: It's Attorney Maier.

14 THE COURT: My apologies. I was aware of
15 that.

16 ATTORNEY MAIER: It still does not.

17 **EXAMINATION OF BRIAN LEITZINGER**

18 **BY ATTORNEY VISHNY:**

19 Q There weren't any bullets found in that area either,
20 right?

21 A In the holding tank that was emptied?

22 Q Correct.

23 A No.

24 ATTORNEY VISHNY: All right. Nothing
25 further.

1 THE COURT: Thank you, sir.

2 And why don't we take our -- basically our
3 afternoon break. We'll take 15 minutes and then we
4 should be all set at 2:30.

5 Please rise for the jury.

6 (The jury was escorted out of the
7 courtroom.)

8 THE COURT: We did have during this
9 afternoon session we had one sidebar. There was a
10 question related to Sergeant Leitzinger, it was
11 clarified that Sergeant Lietzinger did not have his
12 own independent report as it pertained to the
13 questions that were being asked.

14 ATTORNEY VISHNY: It was fine.

15 THE COURT: And so it -- it was resolved
16 amongst the parties themselves so I need to take no
17 action.

18 ATTORNEY VISHNY: I just wasn't aware of
19 what his purpose was.

20 THE COURT: Any questions before we break,
21 Attorney Schneider?

22 ATTORNEY SCHNEIDER: No, Judge.

23 THE COURT: Attorney Vishny?

24 ATTORNEY VISHNY: No.

25 THE COURT: We'll be in recess for about

1 ten, twelve minutes.

2 (Court in recess.)

3 THE COURT: We can bring in the jury.

4 Please rise for the jury.

5 (The jury was escorted into the courtroom.)

6 THE COURT: Mr. Maier, are you prepared
7 with your next witness, sir?

8 ATTORNEY MAIER: I am. Your Honor, the
9 State calls Melanie Thao.

13 THE CLERK: Please raise your right hand.

14 (Oath administered to witness.)

15 THE WITNESS: I do.

16 THE CLERK: Please state your full name and
17 spell it for the record please.

18 THE WITNESS: Melanie Thao, M-E-L-A-N-I-E,
19 T-H-A-O.

THE COURT: Miss Thao, you may be seated.

21 And then that microphone will adjust, so if you need
22 it to be a little louder, certainly feel free to move
23 it.

24 Mr. Maier, your witness.

25 EXAMINATION OF MELANIE THAO

1 **BY ATTORNEY MAIER:**

2 Q Miss Thao, are you an only child or do you have
3 siblings?

4 A I have siblings.

5 Q How many brothers do you have?

6 A Three brothers.

7 Q And how many sisters?

8 A Three.

9 Q Do you have a sister named Stephanie?

10 A Correct.

11 Q And is Stephanie older or younger than you?

12 A She's older.

13 Q Is she the oldest of your sisters?

14 A No.

15 Q So where did you fall in line on your -- among your
16 sisters?

17 A I'm the youngest.

18 Q And then is Stephanie the next one up?

19 A Yup.

20 Q And then two above her?

21 A Yes.

22 Q Do you know someone named Chong Lee?

23 A Yes, I do.

24 Q And is he the defendant seated in court today?

25 A Yes.

1 Q How long have you known Mr. Lee?

2 A I'm not sure. Well, four, five years.

3 Q Four or five years now?

4 A Yeah.

5 Q In December of 2013 then you would have known him for
6 two to three years; is that fair to say?

7 A Correct, yeah.

8 Q How would you describe your relationship with Mr.
9 Lee?

10 A I wouldn't say we were close but we were, I guess,
11 acquaintances.

12 Q Okay. Are you somebody that there is a difference
13 between an acquaintance and a friend? Yes?

14 A Yeah.

15 Q What's the difference between an acquaintance and a
16 friend to you?

17 A Well, friend I would say someone -- for me I would
18 say someone who I hang out with on a daily basis.
19 For him I didn't hang out on a daily basis.

20 Q But he was someone that you saw once in a while?

21 A Yeah.

22 Q Yes?

23 A Yeah.

24 Q Okay. Was there a time in December of 2013 that you
25 had dinner with Mr. Lee at a restaurant called Jet

1 Sushi?

2 A Yes.

3 Q And is that a restaurant in Appleton?

4 A Yes.

5 Q Can you explain to the jury roughly where in Appleton
6 Jet Sushi was in 2013?

7 A It's -- I'm not sure how to explain, but it's
8 somewhere in the south area of Appleton.

9 Q Okay.

10 A Close to --

11 Q Go ahead.

12 A -- Darboy.

13 Q In Darboy?

14 A Yeah.

15 Q Okay. When you went to Jet Sushi with the defendant
16 back then, whose idea was it?

17 A I'm not sure whose idea it was because I was at work
18 and then I was just told that we were going out to
19 eat.

20 Q Okay. How did you find out that you and the
21 defendant were going to go out to eat?

22 A Well my sister came to pick me up from work.

23 Q Was -- was that something that she did -- would she
24 have done that anyway, pick you up from work?

25 A Yes.

1 Q So when she picks you up, she says we're going to go
2 meet Chong; is that correct?

3 A Correct.

4 Q Was he with her when she picked you up from work?

5 A No.

6 Q So you -- you go to Jet Sushi then from your work.

7 A Correct.

8 Q Anything unusual about getting picked up and going to
9 dinner to eat with Chong Lee --

10 A No.

11 Q -- at that restaurant? Is that someplace you'd been
12 before?

13 A Yeah. I've been there before.

14 Q Okay. What happens when you get to Jet Sushi?

15 A We ate our dinner.

16 Q Okay. Was there a conversation?

17 A There was a conversation, but then I don't remember
18 because I wasn't seated next to him. Stephanie was
19 in between us so I don't remember anything being
20 exchanged.

21 Q And is this -- this is a place where you're not
22 necessarily at a table; is that fair to say?

23 A Correct.

24 Q It's like a countertop?

25 A Yes.

1 Q Where is Stephanie relative to you as you're sitting
2 to eat that night?

3 A It was me and then she was in the middle and then
4 Chong was to her right.

5 Q So she's to your right?

6 A Yeah. And then Chong is to her right.

7 Q Okay. Anyone else there eating with you besides you
8 and your sister and Chong Lee?

9 A No.

10 Q Miss Thao, sometime, excuse me, about a month after
11 this dinner at Jet Sushi, there was a time that some
12 detectives came to your house; is that correct?

13 A Correct.

14 Q And they spoke to you about some things that had
15 happened between the time of a fatal shooting at Luna
16 Lounge and when they were there that day, right?

17 A Yes.

18 Q And when you talked with them, it was two detectives
19 from Appleton Police Department, right?

20 A Yup.

21 Q One real tall guy, might have had a beard?

22 A I don't remember.

23 Q Okay. And then another guy who would have been clean
24 shaven, kind of middle aged white guy?

25 A Yes.

1 Q They talked to you at your house, right?

2 A Yup.

3 Q Yes?

4 A Yes.

5 Q And where in your house were they talking to you?

6 A In my room.

7 Q In your room?

8 A Yup.

9 Q Did you have a dog at the time?

10 A Yes, I think so.

11 Q And it was a -- kind of a pup or a really young

12 dog?

13 A Yes.

14 Q Was the dog really friendly like clingy to you or to

15 the detectives during the interview, do you recall

16 that?

17 A No, I don't recall that.

18 Q Okay. Do you remember them having anything to do

19 with the dog at all?

20 A No.

21 Q Do you recall talking to them about the dinner at Jet

22 Sushi?

23 A Yes.

24 Q I'm going to show you what's been marked Exhibit 141.

25 Now you're indicating today that you did not hear Mr.

1 Lee say anything about a shooting at Luna Lounge
2 while you were at Jet Sushi that night?

3 A Correct.

4 Q And you're saying that's because your sister was next
5 to you and then he next to her?

6 A Right.

7 Q Okay. That's not what you told the detectives back
8 in January of 2014 though, correct?

9 A I don't remember what I told them.

10 Q Okay. You think it would help you to take a look at
11 a transcript of the recording of your interview with
12 them?

13 A I think so.

14 Q You're going to have to speak up a little bit.

15 A Yes.

16 Q You think so?

17 A Yeah.

18 Q This is Page 11, we're starting at Line 5. You see
19 how the lines -- the lines are numbered there? Take
20 a look between Line 5 and Line 17 and let me know if
21 that refreshes your recollection about what he said
22 while you were at Jet Sushi that night.

23 A (Witness complying.) I might have said it, but I'm
24 trying hard to remember what -- what has been said
25 that night, but I can't remember anything being -- I

1 just can't remember anything being said that night.

2 Q Okay. So you don't recall -- do you recall the
3 interview with the detectives?

4 A Yes.

5 Q And reading these, you know, 13 lines, that helps
6 refresh your mind about what you told them then?

7 A Sort of, not really.

8 Q Okay. All right. And what I'd like to do then is
9 just go through this with you. Starting on Line 5 we
10 have, that's Schira, that would be the clean shaven
11 of the two detectives. He says, okay. This is
12 talking about being at Jet Sushi that night. And
13 what did Chong tell you at -- when he was having
14 dinner with you. Do you see that?

15 A Yes.

16 Q And your response, Thao, he just said, um, um, he was
17 there the night of the shooting and he was there and
18 then he left to Sharks after the shooting. Correct?

19 A Correct.

20 Q Any reason to believe the transcript of your recorded
21 interview is inaccurate?

22 A No.

23 Q Okay. Starting at Line 9.

24 Schira: Okay, so he said he was there.

25 You reply: Uh-huh.

1 Correct?

2 A Yes.

3 Q Then Detective Schira: When the shooting occurred.

4 You reply: Uh-huh.

5 Correct?

6 A Correct.

7 Q Then Detective Schira: Okay. He said after the
8 shooting.

9 And you replied: That he went to Sharks.

10 Correct?

11 A Correct.

12 Q And Detective Schira says: That he went to Sharks.

13 Okay. And then what did he say.

14 And in Line 16 and 17, what's your reply?

15 A Do you want me to read it?

16 Q Please.

17 A That he didn't say nothing because I honestly, like I
18 don't even care about whatever happened, I just --

19 Q Now, there's a point then after this where Sergeant
20 Schira tells you that a number of other people are
21 out there, I suppose, who Chong admitted being
22 involved in this shooting. Do you recall them
23 telling you that?

24 A Could you repeat that?

25 Q After you say this about not really wanting -- you

1 say, honestly, like I don't even care about whatever
2 happened. Sergeant Schira, if you look, talks about,
3 one thing you have to understand, that it's not one
4 person or two people. And you replied, uh-huh.

5 Correct?

6 A Correct.

7 Q And then he says: Or three people or even five
8 people that Chong has talked to that he's admitted to
9 being the shooter. Your reply is uh-huh. Correct?

10 ATTORNEY WEITZ: Your Honor --

11 THE WITNESS: I don't remember.

12 THE COURT: Mr. Weitz, come on up.

13 (Bench conference.)

14 Q (BY ATTORNEY MAIER) All right, Miss Thao, so he had
15 that -- that little bit of discussion with you and
16 provided you that information, correct?

17 A Correct.

18 Q Now, after this, and we're talking about Page 12 and
19 starting on Line 8, Sergeant Schira says: Did Chong
20 admit to you about his part in the shooting. Your
21 response was what?

22 A He did once.

23 Q And he replies: Okay. And then you said in Line
24 11?

25 A When we went out to eat.

1 Q Okay. Sergeant Schira farther down says: What did
2 he say? Do you see that in Line 18?

3 A Yup.

4 Q Yes? Now he says: What did he say. Correct?

5 A Correct.

6 Q And starting on Line -- the end of Line 22, can you
7 read this last sentence please?

8 A He told me, um, I think it started out with some
9 racist stuff. I don't know.

10 Q Sergeant Schira -- turning to the top of Page 13,
11 Sergeant Schira says: Okay. There's a little back
12 and forth where he says it's important to hear about
13 that. Do you see that?

14 A Yes.

15 Q Then starting on Line 6 you say: Yeah. And then I
16 guess he told me, like he was saying how I think the
17 guy, the victim.

18 Sergeant Schira says: Uh-huh.

19 You reply in Line 9 by saying what?

20 A He was -- Chong saw him like he was about to swing at
21 his brother or something.

22 Q And Sergeant Schira says: Okay. And then what do
23 you say?

24 A And then I think that's when Chong, I guess, Chong
25 did what he did I guess.

1 Q Sergeant Schira says: Okay. Well, what did he say?
2 I mean did he say that -- I mean you said that Chong
3 said that he shot the guy. And you replied?

4 A Uh-huh.

5 Q And then Sergeant Schira says: So what, what did he
6 say specifically.

7 A Well he said he shot the guy, then he left to
8 Sharks.

9 Q And Sergeant Schira says: Okay.

10 And you indicate: That's what he said.
11 Correct?

12 A Correct.

13 Q Excuse me. One second.

14 THE COURT: Miss Thao, I think that's a --
15 that should be a fresh bottle of water in case you
16 need it.

17 THE WITNESS: Okay. Thank you.

18 Q (BY ATTORNEY MAIER) Talking about this now on the
19 stand and hearing, you know, me sort of as the voice
20 of Sergeant Schira in this interview and you in your
21 own voice, does that help you remember any of this,
22 when you talked to the detectives that day?

23 A A little.

24 Q Okay. Do you recall what it was that Chong told you
25 at Jet Sushi about what he did after he shot this

1 person that was involved with his brother Paul?

2 A No.

3 Q Do you recall why it was, if there was any reason
4 given, why Chong said that he did this?

5 A It was about like I -- it was about some racist
6 things.

7 Q But not involving him directly?

8 A No.

9 Q So your recollection is that something might have
10 been said to someone?

11 A Correct.

12 Q Do you know who?

13 A No.

14 Q And that based on something that might have been said
15 to someone, you don't recall who, Chong told you that
16 he shot this person?

17 A Yeah. I don't remember.

18 Q And then left to go to Sharks pool hall, right?

19 A Correct.

20 Q When he says Sharks in here, you're familiar with
21 Sharks pool hall on College Avenue --

22 A Yes.

23 Q -- as well, correct?

24 A Yup.

25 Q And this dinner at Jet Sushi would have been just a

1 couple days after this happened at Luna Lounge,
2 right?

3 A Correct.

4 Q Chong came separately from you and your sister,
5 right?

6 A Yes.

7 Q And do you call -- what time would it have been?

8 A I would say around seven.

9 Q What makes you say that?

10 A It was dark outside.

11 Q And how late did you work?

12 A Until 6:30.

13 Q Where were you working there? You don't have to say
14 exactly where, but were you working nearby to Jet
15 Sushi?

16 A Kind of, yeah.

17 Q Okay. So how far of a drive was it for your sister
18 to take you to Jet Sushi from work?

19 A It was about, I would say, two, three miles.

20 Q Okay. So just in ordinary Appleton traffic maybe
21 five minutes or so?

22 A Yes.

23 Q And then you get into the restaurant and you fill the
24 card out and let them know what you want and then
25 kind of wait?

1 A No. We -- there's a line and the food just goes
2 around and then we just grabbed it from the line.

3 Q Right. So there's boats, right?

4 A Yeah.

5 Q So it's not really a matter of making an order and
6 having a conversation while you're waiting for the
7 food, you start eating pretty much right away?

8 A Yes.

9 Q And this conversation is happening pretty much right
10 away?

11 A Yes.

12 Q Okay. How many other people were at the restaurant
13 that night? Was it crowded or not so much?

14 A Not so much.

15 Q In this conversation as Mr. Lee is telling you about
16 having shot the person at Luna Lounge the previous
17 weekend, did he tell you anything about what he did
18 with the gun?

19 A He thought he broke the gun and tossed it in a lake
20 or something.

21 Q That he broke the gun?

22 A Yeah.

23 Q Are you familiar with guns at all?

24 A No.

25 Q Okay. Who paid for dinner that night?

1 A Chong did.

2 Q Do you recall if he used a credit card or cash?

3 A I believe it was cash.

4 Q Then was there a time -- what did you do the next
5 day?

6 A I went to school.

7 Q Okay.

8 A And possibly work. I don't remember.

9 Q Okay. What did you do for dinner the next day?

10 A I'm not sure if it was the night we went to Buffalo
11 Wild Wings.

12 Q Was there a time in that same few days that you had
13 dinner at Buffalo Wild Wings?

14 A Yes.

15 Q Which -- which of those restaurants was it?

16 A It was the one near -- it was the one near Jet
17 Sushi.

18 Q Okay. On -- also on the south side of Appleton?

19 A Yes, yes.

20 Q And people, maybe mistakenly that far west, but they
21 call that Darboy as well, correct?

22 A Correct.

23 Q Who was at BW3 or Buffalo Wild Wings that night?

24 A Just us three, me, Stephanie and Chong.

25 Q Whose idea was that?

1 A I don't know.

2 Q Okay. Was it a similar situation to the night
3 before?

4 A I believe so.

5 Q Okay. So Stephanie comes to work when you're done?

6 A Yup. She picked me up.

7 Q And she says we're going to B-Dubs with Chong?

8 A Yes.

9 Q And then you drive there?

10 A Yeah, she drove us there.

11 Q She drives. Roughly similar length of drive to get
12 there?

13 A Yeah.

14 Q So safe to say that you would arrive around the same
15 time you would have arrived at Jet Sushi the night
16 before?

17 A Yes.

18 Q Is your recollection that you were seated right
19 away?

20 A Yes.

21 Q And the three of you are sitting -- doesn't really
22 matter, but if you recall, are you at one of the
23 booths or are you at a table or in the bar area?

24 A A booth.

25 Q And how are people positioned in the booth?

1 A I believe Chong was sitting across from me and
2 Stephanie.

3 Q You're sitting next to your sister that night?

4 A Yes.

5 Q And he's a table width away from you?

6 A Yes.

7 Q What happened during that dinner?

8 A He told us -- he told us what happened at Luna.

9 Q Okay. What did he say happened at Luna?

10 A There was a shooting and he shot a person.

11 Q Okay. Did he say anything about the person he
12 shot?

13 A I don't remember.

14 Q Okay. Do you recall if he said he shot a person that
15 was Asian or white or black?

16 A White.

17 Q White?

18 A Yes.

19 Q Did he say whether this person was young or old?

20 A No.

21 Q Did he say whether they were tall or short?

22 A No.

23 Q Large or thin?

24 A No.

25 Q Did he say whether it was a man or a woman?

1 A A man.

2 Q Did he say anything to you -- what did he say to you
3 about the -- I guess the moments that led up to the
4 shooting?

5 A I don't know. Just kind of blurted out. I don't --
6 I didn't know what led to the conversation but he
7 just said it.

8 Q What about when he started talking, did he say
9 anything more than he had the night before about why
10 this had happened or what led to it happening?

11 A No, I don't remember.

12 Q Okay. Did he make any statements that night about
13 what he had done after the shooting?

14 A I don't believe -- I don't think so.

15 Q Or where he had gone?

16 A No.

17 Q Or what he had done with the gun?

18 A He said the same thing when I -- that he broke the
19 gun and tossed it in the lake. That's what he
20 said.

21 Q Did he say lake?

22 A Yeah.

23 Q Okay. During the time that you're at Buffalo Wild
24 Wings on the south side and he's in the process of
25 telling you about murdering someone, were there times

1 that he had a phone out?

2 A Yes.

3 Q And did he take any pictures of you and your sister
4 during the time you were at BW3s that night?

5 A Yes.

6 Q Have you seen them?

7 A Yes.

8 Q Did you see them when he took the pictures?

9 A No, not that I remember.

10 Q Okay. You don't recall him, you know, snapping the
11 picture and then turning the screen around or
12 anything like that?

13 A No, no.

14 Q In fact you saw them later on, right?

15 A Yes.

16 Q And they had been posted on his Facebook page?

17 A Yes.

18 Q With some comments about having been to B-Dubs?

19 A Yes.

20 Q And then were you and -- were you and your sister
21 tagged in that picture then, is that why you saw
22 it?

23 A I don't think so. I don't think we were tagged.

24 Q Okay. So you would have just seen them pop up in the
25 normal course of looking at Facebook --

1 A Yes.

2 Q -- time lines?

3 A Yes.

4 Q All right. Miss Thao, I'm going to show you what's
5 been marked as Exhibit 129 and also Exhibit 130 and
6 then finally Exhibit 131. Can you -- just take a
7 look at these three exhibits, and then can you tell
8 the jury, if you're able to tell, which one was taken
9 -- which one would have been first, which one would
10 have been second, which one would have been third in
11 time.

12 A This one might have been first.

13 Q Okay. And you held up Exhibit 130, right?

14 A Yes. And then I'm not sure about these two.

15 Q Okay. Looking at them, was it a big difference in
16 time between first picture and last picture?

17 A No.

18 Q How much time do you think went between the first
19 picture and the last picture?

20 A Probably less than a minute.

21 Q Okay. What are -- what does Exhibit 129 show?

22 A Stephanie eating.

23 Q That's your sister eating?

24 A Yes.

25 Q And are you able to tell from looking at that picture

1 where it was taken?

2 A Buffalo Wild Wings.

3 Q And that would have been that night, the early week
4 after the incident at Luna Lounge?

5 A Yes.

6 ATTORNEY MAIER: I'd move in Exhibit 129 at
7 this time.

8 ATTORNEY WEITZ: No objection.

9 THE COURT: Exhibit 129 will be received.

10 Q (BY ATTORNEY MAIER) Exhibit 130, what is that,
11 Melanie?

12 A Stephanie and I eating.

13 Q Also at BW3s?

14 A Yes.

15 Q Also that same night?

16 A Yes.

17 ATTORNEY MAIER: I would move in Exhibit
18 130.

19 ATTORNEY WEITZ: No objection.

20 THE COURT: Exhibit 130 shall be
21 received.

22 Q (BY ATTORNEY MAIER) 131, what does that show?

23 A Me with my hands up.

24 Q I'm sorry. It's a picture of you?

25 A With my hands up covering my face.

1 Q Why are you covering your face?

2 A It was spicier, the wings were spicy.

3 Q And that's a picture of you then at Buffalo Wild
4 Wings the early week after the murder at Luna
5 Lounge?

6 A Yes.

7 Q And that's the same murder that Chong Lee told you he
8 was part of?

9 A Yes.

10 Q And in fact that he had committed, correct?

11 A Correct.

12 Q When he's taking pictures of you and your sister
13 smiling and eating buffalo wings, has he already told
14 you that he had shot and killed someone or had he not
15 gotten to that point in the conversation yet?

16 A I'm not sure. I don't remember.

17 Q Okay. Sometime around when these two dinners
18 happened -- I'm sorry. I misspoke. I'm going to
19 start over again.

20 About a week before the detectives came and
21 talked to you at your house --

22 A Uh-huh.

23 Q -- did you receive a letter from someone that you
24 know to be Chong Lee?

25 A Yes.

1 Q Miss Thao, I'm going to show you what has been marked
2 as Exhibit 91. Do you see the number on there?

3 A Yes.

4 Q Could you take a look at Exhibit 91 and tell the jury
5 if you recognize what that is? It's two pages?

6 A No, I don't.

7 Q Could you take a look at the second page?

8 A Yup. I remember a letter, but then I didn't get a
9 chance to read a letter so --

10 Q You didn't read it before --

11 A No.

12 Q -- before the investigators came and took it?

13 A Nope.

14 Q That's a no?

15 A Yes. Yeah. That's a no.

16 ATTORNEY WEITZ: Your Honor, could we
17 approach?

18 THE COURT: You may.

19 (Bench conference.)

20 Q (BY ATTORNEY MAIER) All right. Miss Thao, what I'm
21 going to do is ask you to take a moment, and
22 particularly looking at the second page, there's a
23 signature to that letter; is that correct?

24 A Yes.

25 Q Do you recognize that signature?

1 A No.

2 Q That's not a signature you've seen before?

3 A No.

4 Q In taking a look at the beginning of the letter,
5 there's a name at the top left on the first page of
6 the letter, right?

7 A Yes.

8 Q What does it say?

9 A Mel.

10 Q And that would be short for Melanie --

11 A Yes.

12 Q -- correct?

13 Any doubt that letter is directed to you?

14 A No.

15 Q It arrived at your house?

16 A Yes.

17 Q Came in an envelope?

18 A Yes.

19 Q Do you recall what was on the envelope?

20 A No.

21 Q Miss Thao, I realize that you indicated before that
22 you had not read the letter that came from Chong
23 during this time period.

24 A Correct.

25 Q Had you seen his handwriting before?

1 A No.

2 Q You had not seen his handwriting before?

3 A No.

4 Q If you take a look at the letter, and I'm just going
5 to give you a few moments to do it, look at what the
6 letter says, and understanding you haven't read it
7 until today, so you say, let me know when you've read
8 through it and I may have a couple questions for you.

9 A (Witness complying.) Okay.

10 Q You've read it?

11 Having read that, do you have any additional
12 beliefs about who wrote the letter?

13 A Yeah, Chong.

14 Q Okay. That would be Chong Lee?

15 A Yes.

16 Q And that's based on the information that's in there
17 that maybe he would know and you, maybe some family
18 would know but no one else?

19 A I'm not sure.

20 Q Okay. But you believe it's a letter from Chong
21 Lee?

22 A Right.

23 Q And in fact when the detectives, Detective Schira,
24 who I was sort of playing the role of earlier, was
25 talking to you, they were there to execute a search

1 warrant to come look for letters that had been sent
2 by Chong to you and your sister, right?

3 A Yes.

4 Q And after he read the search warrant to you, you even
5 said to him, well he sent me a letter, and basically
6 said, let me show you where the letter is, right?

7 A No, I didn't tell them. I didn't say let me show you
8 the letter.

9 Q But you indicated that you had received a letter from
10 him?

11 A Right. Because Stephanie told me that there was a
12 letter, yeah.

13 Q Okay. I'm going to ask you, and I'm -- we're talking
14 about the first page, top page of Exhibit 91, there's
15 a highlighted portion. Are you -- first of all are
16 you able to read the handwriting that makes out that
17 highlighted portion?

18 A Yes.

19 Q Now would you please read the highlighted portion out
20 loud please?

21 A Now, oh, my God, I'm a little nervous like for real.
22 Paul and Joe did this to me. Joe, I trusted him more
23 than everybody. Even more than Myko. Sniff sniff.
24 And then Paul, my own blood. My heart is bleeding.
25 I never thought they would do this. They pointed the

1 finger right at me without a thought. And then they
2 had the balls to lie to me that they didn't talk to
3 the cops when I found out they did. It's fucking in
4 black and white and they still lying that they never
5 said anything. Like for real. Be a fucking man.
6 Own up to it.

7 Q Okay. Thank you.

8 ATTORNEY MAIER: At this point I'd move in
9 Exhibit 91.

10 THE COURT: Any objection?

11 ATTORNEY WEITZ: No.

12 THE COURT: 91 will be received.

13 Q (BY ATTORNEY MAIER) Miss Thao, do you know someone
14 named Teng Lee?

15 A Yes, I do.

16 Q Who is Teng Lee?

17 A He's a nephew to me.

18 ATTORNEY VISHNY: I'm sorry. I couldn't
19 hear the answer.

20 A He's a nephew to me.

21 Q Is he related at all to Chong Lee?

22 A Yes.

23 Q Or is he more -- and I realize there's some relation
24 through a common last name, but is he more of a
25 friend than a true relative?

1 A I'm not sure about that.

2 Q Okay. Is he a friend of Chong's?

3 A Yes.

4 Q Do you know how long he's been a friend of Chong's?

5 A No, I do not.

6 Q Has he been someone that you would associate with
7 Chong for as long as you've known Chong?

8 A Yes.

9 Q So for at least now I think you said four or five
10 years?

11 A Yeah.

12 Q At the time this all was happening, would have been
13 two to three years?

14 A Yes.

15 Q At least that long, right?

16 A Yes.

17 Q Now, the detectives when they came to serve the
18 search warrant at your house, Detective Schira and
19 the other officer, that was, like I said, give or
20 take a month after these dinners at Jet Sushi and
21 BW3, correct?

22 A Yes.

23 Q And if I told that you it was January 21st of 2014,
24 would you have any reason to think I was wrong about
25 it?

1 A No.

2 Q Okay. Now, about three weeks after that, did
3 officers speak to you again?

4 A Yes.

5 Q And was it the same people or a little different?

6 A A little different.

7 Q Okay. How was it a little bit different?

8 A I think one was the same guy that talked to me before
9 and then one was a different guy.

10 Q Can you describe what the other one looked like?

11 A I don't remember.

12 Q Okay. Do you know someone named Phong Lee?

13 A Yes.

14 Q Are Phong and Teng related?

15 A Yes, they're brothers.

16 Q Okay. Sometime between when this happened at Luna
17 and the second time the police talked to you, which
18 would have been on February 12th, did you receive a
19 Facebook message from Teng Lee?

20 A Yes, I did.

21 Q And do you recall approximately how long before the
22 second time the detectives talked to you you received
23 that message?

24 A No.

25 Q Is -- is Facebook something that is a common or

uncommon way for you to communicate with people?

2 A Common.

3 Q At the time that this happened in early or late '13,
4 early '14, did you have a phone?

5 A Yes.

6 Q And was your Facebook set up into your phone so you
7 get notifications right as you were driving or
8 walking or standing or whatever?

9 A Yes.

10 Q When the message came in from Teng, did you read it
11 right away?

12 A I don't remember. I'm not sure if it's right away.

13 Q Okay. But it wasn't like weeks later that you
14 finally got around to it?

15 A No, no, no.

16 Q Correct?

17 A Yeah.

18 Q What did the message from Teng Lee say?

19 ATTORNEY WEITZ: Your Honor, I'm going to
20 object at this point.

21 THE COURT: Counsel approach.

22 (Bench conference.)

23 Q (BY ATTORNEY MAIER) Miss Thao, do you recall what
24 the question was?

25 A Yes.

1 Q What the message was?

2 A Yes.

3 Q What did it say from Teng?

4 A Yes. He had asked me not to testify.

5 Q In this message did he say what it was that you were
6 not supposed to testify in?

7 A No, I believe he didn't.

8 Q What did -- how did you interpret that, getting a
9 message from him saying don't testify?

10 A I knew he was talking about this case.

11 Q So you knew when you received that message that it
12 dealt with a case involving Chong Lee?

13 A Correct.

14 Q And you were aware that he had -- he Chong Lee had
15 been charged with a fairly major crime at that point,
16 correct?

17 A Yes.

18 Q The message that was sent, did it -- was it
19 specifically -- it's been deleted, correct?

20 A Yes.

21 Q And did it say just, Melanie, don't testify, or was
22 it directed at someone else as well?

23 A I believe it was only me.

24 Q Did you reply back?

25 A Yes.

1 Q And what did you say?

2 A I asked him if we could do that.

3 Q I'm sorry?

4 A I asked him if we were able to not testify.

5 Q You asked Teng if -- you said we?

6 A Yes.

7 Q Were able to not testify?

8 A Yes.

9 Q We would refer to you and someone else, right?

10 A Right.

11 Q Who is that someone else?

12 A Stephanie.

13 Q Your sister Stephanie?

14 A Yes.

15 Q When you replied, had you talked to your sister

16 Stephanie yet?

17 A I don't remember.

18 Q Is it possible you did? I'm sorry. Is it possible

19 that you did talk to her before you replied?

20 A No, no.

21 Q So you talked to her -- just want to make sure I get

22 the sequence right. You get a message from Teng,

23 right?

24 A Yes.

25 Q You then reply to it?

1 A Yes.

2 Q And then you talk to your sister about it?

3 A Yes.

4 Q Did you show your sister the message?

5 A No, I didn't.

6 Q When in that sequence of things did you delete it?

7 A Right after.

8 Q After replying?

9 A Yes.

10 Q What did you tell her about the message that you
11 received from Teng?

12 A I just told her T or Teng said for us not to
13 testify.

14 Q And you said to her, he told us not to testify?

15 A Correct.

16 Q So his message would have included your sister in it
17 as a recipient; is that fair to say?

18 A Yes.

19 Q Is it just sort of the case that if you -- and I
20 don't want you to take this the wrong way, but if you
21 send a message to Melanie is Stephanie going to find
22 out?

23 A Yes.

24 Q In general?

25 A Yes.

1 Q And if you send something to Stephanie is Melanie
2 going to find out?

3 A Possibly, yeah.

4 Q Okay. As far as you know?

5 A (Witness nodding.)

6 Q And in fact you two shared a bedroom, right?

7 A Yes.

8 Q And you consider yourself close to your sister, I
9 assume?

10 A Yes.

11 Q That continues to this day?

12 A Yup.

13 Q When you spoke with the detectives both times, you
14 were hesitant to talk about what had happened; is
15 that fair to say?

16 A Yeah.

17 Q How involved in all of this did you want to be?

18 A Not at all.

19 Q And this is someone that you have known for a while
20 who sort of involves you in this by telling you
21 things; is that right?

22 A Correct.

23 Q You must have had at least somewhat positive feelings
24 for him prior to him saying all these things,
25 right?

1 A Yes.

2 Q And he also for you as far as you knew?

3 A Yes.

4 Q And also for your sister?

5 A Yeah.

6 Q Had he ever bought you anything?

7 A Yes.

8 Q What had he bought you?

9 A A Coach wristlet.

10 Q A wristlet?

11 A Yes.

12 Q That's a big wallet or a small purse; is that fair to
13 say?

14 A Yeah. It's a small purse.

15 Q Was there a point that you and Chong Lee dated?

16 A No.

17 Q Was there ever a time that you would have considered
18 him your boyfriend?

19 A No.

20 Q Did he ever refer to you as his girlfriend?

21 A Not that I know of.

22 ATTORNEY MAIER: Melanie, thank you very
23 much. I don't have any further questions for you.

24 THE COURT: Any defense questions?

25 ATTORNEY WEITZ: Yes. One moment.

1 THE COURT: Whenever you're ready then,
2 counsel.

3 ATTORNEY WEITZ: Thank you.

4 **EXAMINATION OF MELANIE THAO**

5 **BY ATTORNEY WEITZ:**

6 Q All right, Miss Thao, fair to say that this
7 conversation we've been talking about all afternoon
8 here happened a long time ago, right?

9 A Yes.

10 Q It was actually over two years ago at this point.

11 A Yes.

12 Q Okay. And some of the details you may not remember
13 precisely, right, because it was so long ago?

14 A Right.

15 Q And at the time you had this conversation, Chong, he
16 wasn't as you said a close personal friend of yours,
17 right?

18 A Yes.

19 Q He wasn't someone that you saw on a daily basis?

20 A No.

21 Q And as we're kind of talking about stuff here today
22 it appears that some of the details are now kind of
23 coming back to you?

24 A Sort of, yeah.

25 Q Okay. And this is something that you haven't really

1 talked about much up until coming to court here
2 today, right?

3 A Right.

4 Q Okay. In terms of Chong, is it fair to say that a
5 lot of times when he tells you stuff, you kind of
6 just block it out?

7 A Yes.

8 Q You don't remember it?

9 A Yes.

10 Q Okay. And is that because a lot of times the stuff
11 that he tells you is completely untrue?

12 A Yes.

13 Q So it's not unusual that you kind of just tune out
14 whatever Chong is saying.

15 A Yes.

16 Q Okay. And when he lies about stuff, is that kind of
17 to make himself appear to be the center of attention
18 or to kind of try to impress you?

19 A I -- I don't know. I feel like sometimes it was to
20 impress me.

21 Q Okay. Kind of like how he bought you the Coach
22 wristlet?

23 A Maybe, yeah.

24 Q Okay. Because a lot of times -- I mean when you're a
25 girl, that's the kind of things that guys do to try

1 and impress you is buy you stuff?

2 A Yes.

3 Q Or talk about things that may or may not be true, but
4 to try and give you the illusion that they are true,
5 right?

6 A Right.

7 Q Okay. And in the past Chong's told you things that
8 you know for certain are not true, like that he
9 bought a house?

10 A Right.

11 Q And you never got to see that house?

12 A Yes. I never did.

13 Q You and your sister were kind of looking forward to
14 the house warming party but that never happened,
15 right?

16 A Right.

17 Q Because there wasn't a house.

18 A Right.

19 Q So it's those types of things he would talk about,
20 having cars or houses or money?

21 A Yeah.

22 Q And stuff like that to impress you?

23 A Right.

24 Q Okay. Now, going back to January two years ago when
25 the police came to talk to you, at first they kind of

1 asked you about the Luna shooting, right?

2 A Yes.

3 Q And you told them at first that you knew about it
4 because you saw it on the news, right?

5 A Yes.

6 Q Okay. And they kind of suggested to you some of the
7 information that they were looking to get from you.
8 Do you remember that either from then or from what
9 you read now today?

10 A Yes.

11 Q Okay. For example, when you were reading earlier,
12 they told you that some other people had said that
13 Chong admitted to them that he did the shooting.
14 That was one of the things you read earlier, right?

15 A Yes.

16 Q Okay. And then after that, they asked you whether he
17 said something to you and at that point you just said
18 yes, right?

19 A Yes.

20 Q And again, that was something that you read earlier
21 so now you remember. Right?

22 A Yeah.

23 Q At another point, and I'm not sure if you were shown
24 this part earlier so I'm going to show you.

25 ATTORNEY SCHNEIDER: Melanie, do you have

1 paperwork in front of you?

2 THE WITNESS: No, I don't.

3 Q (BY ATTORNEY WEITZ) I'm going to show you what's
4 been marked Exhibit 141. I'm going to ask you, do
5 you remember reading that part earlier?

6 ATTORNEY SCHNEIDER: What page are you on?

7 ATTORNEY WEITZ: Page 13. I'm sorry.

8 ATTORNEY SCHNEIDER: Thank you.

9 A Yes.

10 Q Okay. And you see Lines 14 through 15 -- actually,
11 I'm sorry, I'm going to go to the bottom of that
12 page, 21 to 23. That's where it says Schira, right,
13 that's one of the detectives that was talking to
14 you?

15 A Yes.

16 Q And he asks you if -- if Chong said that he did this
17 because he was in a -- the victim was in a fight with
18 his brother Paul, right?

19 A Yes.

20 Q And then on the very next page at the top of the page
21 you say, yeah, yeah, that's what?

22 A Yeah.

23 Q Does that help refresh your recollection of that part
24 of the conversation?

25 A Yeah, sort of.

1 Q Okay. From your memory, I guess without going back
2 to these specific lines, at some points in this
3 conversation the detectives suggested some details to
4 you that you just kind of adopted by saying yeah or
5 yes, right?

6 A Yes.

7 Q Is that something you remember?

8 A Yup.

9 Q Okay. Also, in this interview at times you told the
10 detective that some of the things you may have heard
11 on the news, right?

12 A No.

13 Q If I showed you that part of the transcript, would
14 that help refresh your recollection?

15 A Maybe.

16 Q Okay. I'm going to show you the same exhibit, Page
17 17. I'm going to direct you to Lines 9 and 10. Does
18 that help refresh your recollection about seeing
19 stuff on the news?

20 A No.

21 Q No? Okay. On Lines 9 and 10 did you say that I know
22 that on the news I saw that they found a gun at
23 Sharks or something?

24 A I think so, yeah.

25 Q Okay.

1 ATTORNEY VISHNY: I couldn't hear the
2 answer.

3 ATTORNEY WEITZ: She says, I think so,
4 yes.

5 Q (BY ATTORNEY WEITZ) In this interview with officers,
6 do you remember a lot of times telling them that --
7 that the things that Chong tells you you didn't
8 believe because he's kind of a liar?

9 A Yes.

10 Q And actually you made a number of mentions to that,
11 right?

12 A Yes.

13 Q Do you remember saying that a lot of people told me
14 he's a liar so I never really know what's a true
15 story?

16 ATTORNEY MAIER: I'm going to object. Can
17 we approach, Your Honor?

18 THE COURT: You may.

19 (Bench conference.)

20 Q (BY ATTORNEY WEITZ) I'm going to rephrase the
21 question.

22 Do you remember telling the officers that you
23 never really know what's a true story when Chong is
24 talking?

25 A Yes.

1 Q Okay. And you also told them that he wanted people
2 to think that you and your sister were kind of
3 fighting over him?

4 A Yes.

5 Q So that would be another thing that wasn't true,
6 right?

7 A Right.

8 Q Because as you testified earlier, you -- you weren't
9 fighting over him, right?

10 A No, no.

11 Q Okay. You didn't have any romantic interest?

12 A No, no.

13 Q Okay. And, Miss Thao, you're not the kind of person
14 that if some -- if you thought that someone had
15 killed someone that you would want to go out to
16 dinner with them the next night, right?

17 A Right.

18 Q Okay. I'm going to turn now to you were talking
19 earlier about Facebook, that you use Facebook,
20 right?

21 A Right.

22 Q And I believe you said you have that actually on your
23 phone?

24 A On my laptop.

25 Q Okay. So is that where you get Facebook messages

1 then is on your laptop?

2 A Yes.

3 Q Are you on there quite a bit?

4 A No.

5 Q Is that one of the, I guess, primary ways that people
6 talk nowadays is through Facebook?

7 A Right.

8 Q Facebook or text messages?

9 A Yes.

10 Q And one of the people that you converse with was
11 Chong, right?

12 A Yes.

13 Q Okay. And back in December of 2013, December 6th to
14 be specific, do you remember asking Chong why he's
15 always leaving town?

16 A No, I don't remember.

17 Q If I showed you some excerpts from Facebook, would
18 that help refresh your recollection as to that
19 conversation?

20 A Yeah.

21 Q All right, Miss Thao, I'm showing you what's been
22 marked as Exhibit 143. That's going to start at the
23 bottom and the messages go down from there. I'll
24 just ask you to take a second, read that and see if
25 that refreshes your recollection. And it goes onto

1 the next page.

2 A (Witness complying.) I don't remember.

3 Q Do you recognize your name on here?

4 A Yes, yes.

5 Q Okay. And then do you recognize the name of account
6 -- an account that you know to be Chong Lee's?

7 A Yes.

8 Q Okay. And you also see on here that there's a date,
9 right?

10 A Yes.

11 Q And that's 12/6 of 2013?

12 A Yes.

13 Q Okay. And then there's a string of messages,
14 right?

15 A Yes.

16 Q And in one of those messages, again on 12/6/2013, you
17 ask in a message sent to Chong Lee's Facebook
18 account, why are you always leaving town and for
19 what, right?

20 A Yes.

21 Q And there's some additional discussion about leaving
22 town, right?

23 A Yes.

24 Q And if you continue reading down the page and onto
25 the third page, you tell -- you send a message to

1 Chong Lee's Facebook account that says, yeah, as a
2 man and oldest son of the family you have your duty
3 to take care of your family, right?

4 A Yes.

5 Q So you're talking about taking care of his family?

6 A Yes.

7 Q And there's before that some conversation about how
8 he wanted to leave town, right?

9 ATTORNEY MAIER: Object, Your Honor. We
10 need to approach.

11 (Bench conference.)

12 (The jury was escorted out of the
13 courtroom.)

14 THE COURT: We'll go back on the record.
15 We can bring in the jury.

16 (The jury was escorted into the courtroom.)

17 THE COURT: Please be seated

18 counsel, you may continue your questioning.

19 Q (BY ATTORNEY WEITZ) Now, Miss Thao, I think before
20 we took the break I was showing you what had been
21 marked as Exhibit 143 which was some messages from
22 Facebook, right?

23 A Yes.

24 Q Okay. And just to recap, you said that you
25 recognized the name on this document as being

1 Facebook name associated with you?

2 A Yes.

3 Q Okay. And you said you also recognized the other
4 Facebook account as the Facebook account of Chong
5 Lee, right?

6 A Yes.

7 Q I'm going to direct your attention to the bottom of
8 this page. There is a message that shows that you
9 were the recipient, correct?

10 A Yes.

11 Q And it was sent from the account of Chong Lee,
12 right?

13 A Yes.

14 Q Okay. And that message says -- and just -- again,
15 this is on December 6th of 2013?

16 A Yes.

17 Q Okay. And it says, always leaving town now, I hate
18 this town and almost everyone in it, LOL, right?

19 A Yes.

20 Q Okay. Then going to the second page there is a
21 message where the recipient is the Chong Lee account,
22 correct?

23 A Yes.

24 Q And you're the author so that came from you, right?

25 A Yes.

1 Q And it says, why are you always leaving town and for
2 what. Shit. I wish I was able to do the same but
3 nah. Right?

4 A Yeah.

5 Q And then after that there is another message where
6 you're the recipient, meaning that it came from the
7 account of Chong Lee, that says, IDK, which is that
8 short for I don't know?

9 A Yes.

10 Q Okay. So I don't know, I just want to leave but I
11 always have to come back because I'm the only one
12 that can take care of my mom and baby sister,
13 right?

14 A Yes.

15 Q And again, those were on December 6th of 2013?

16 A Yes.

17 Q Now, earlier you testified about a message that you
18 got from someone you know to be Teng Lee, right?

19 A Yes.

20 Q And Teng Lee is actually a relative of yours,
21 right?

22 A Yes.

23 Q And you remembered it saying something about not
24 wanting to come to court, right?

25 A Yes.

1 Q And you responded back to that message, right?

2 A Yes.

3 Q And you said something to the effect of, ask him
4 whether we could not testify?

5 A Yeah.

6 Q Does that sound accurate?

7 A Yes.

8 Q And at that point you didn't feel intimidated by
9 Teng, right?

10 A No.

11 Q And actually the reason that you're asking whether or
12 not that's an option is because you didn't want to
13 have to come to court, right?

14 A Right.

15 Q And the reason you didn't want to have to come to
16 court is because you don't like talking in front of
17 people.

18 A Right.

19 Q And that's one of the things that you told officers
20 when they came and interviewed you back in February
21 of 2013, right?

22 A Yes.

23 Q So that's something that kind of causes you to get
24 kind of nervous?

25 A Yes.

1 Q Okay. I'm sorry. I think I misspoke. I think it
2 was February 2014, not 2013, after the incident at
3 Luna.

4 Now, do you know an individual whose name is
5 Chue Thao?

6 A No.

7 Q You don't recognize the gentleman in the back --

8 A Oh, yeah.

9 Q -- who's wearing a dark suit, blue shirt?

10 A Do I recognize him?

11 Q That's your uncle, right?

12 A Yes.

13 Q And he is someone that you know you can go to if you
14 have a problem, right?

15 A Yes.

16 Q Because he works for the Appleton Police
17 Department?

18 A Yes.

19 Q He's a detective?

20 A Yes.

21 Q Okay. And in this case, after you say that Chong
22 told you that he was involved in this shooting that
23 you had seen on the news, you never went and talked
24 to your uncle, right?

25 A No.

1 ATTORNEY WEITZ: No further questions.

2 THE COURT: Attorney Maier, redirect?

3 ATTORNEY VISHNY: Yes. Thank you, Your
4 Honor.

5 **EXAMINATION OF MELANIE THAO**

6 **BY ATTORNEY MAIER:**

7 Q Miss Thao, the day that the detectives came to your
8 house with the search warrant, were they polite with
9 you?

10 A Yes.

11 Q I mean given that they had a job to do, they -- they
12 didn't yell at you or swear at you or anything like
13 that, right?

14 A No.

15 Q Do you recall who else was present at your house when
16 they came?

17 A No.

18 Q Was your dad there?

19 A Yeah, he was there.

20 Q Anybody else?

21 A I believe my mom was home too and my sister.

22 Q Which sister?

23 A Older sister, not Stephanie.

24 Q Okay. What's your older sister's name that was
25 present there?

1 A Dee.

2 Q I'm sorry?

3 A D-E-E.

4 Q Okay. The officers only really talked with you and
5 your dad though, right?

6 A Right.

7 Q Do you recall that?

8 A Yeah.

9 Q What were they wearing when they came to your door?

10 A I'm not sure.

11 Q I guess I'm not asking you for, you know, blue shirt,
12 tan pants?

13 A I think -- I'm not sure but I think one of the
14 officers was wearing a jacket. That's all I
15 remember.

16 Q Okay. They weren't in like SWAT team --

17 A No.

18 Q -- ballistic tactical gear, right?

19 A No.

20 Q Just maybe kind of ordinary?

21 A Right.

22 Q Regular people clothes?

23 A Right, yes.

24 Q They identified themselves as officers?

25 A Yes.

1 Q Did they have badges that you could see or was it
2 something that they had to kind of move their jacket
3 out of the way to show something on their belt?

4 A I don't remember.

5 Q Okay. But it was nothing like a battering ram
6 hitting your door or anything like that, they knocked
7 on the door?

8 A Right.

9 Q When they went to search, they only really searched
10 part of your house; is that fair to say?

11 A Yes.

12 Q What part was that?

13 A My bedroom.

14 Q And given that they had a job to do, which is to look
15 for the things they listed in the search warrant,
16 would you say that they were -- how would you say
17 that they -- they were in searching your room?

18 A What do you mean?

19 Q I realized in the middle that was not going to be a
20 very good question. I'm sorry.

21 Did they do things like empty out drawers and
22 turn them upside down?

23 A No.

24 Q Did they flip the mattress over and leave it against
25 the wall?

1 A No.

2 Q Did they cut things open?

3 A No.

4 Q What sort of things did they do while they were in
5 your room?

6 A I don't know. I don't think I was in the room with
7 them when they were looking.

8 Q Okay. You testified before that when you talked with
9 them you were in your room?

10 A Yeah. When I -- when they start asking me questions,
11 that's when we talked in my room, but when they were
12 searching my room, I don't think I was in the room
13 with them.

14 Q Okay. Afterwards when you went -- was it upstairs?

15 A No.

16 Q Down the hall?

17 A Yeah.

18 Q When you went down the hall to your room, what did it
19 look like?

20 A They were just looking around.

21 Q They were looking around?

22 A Yeah.

23 Q Was it any messier than it would be ordinarily?

24 A No.

25 Q Okay. When you first started talking with the police

1 that day, is it fair to say you were a little bit
2 nervous?

3 A Yes.

4 Q And I think you told one of the -- one of the
5 detectives, I -- in one of the conversations that you
6 don't really, like, feel comfortable talking to cops.

7 A Right.

8 Q Maybe not the exact words but you said something like
9 that?

10 A Right.

11 Q How did you feel about talking with those detectives
12 that first time after they told you that others had
13 told them that Chong had admitted shooting someone in
14 the head and killing him?

15 A I was -- I was still nervous.

16 Q As much as before?

17 A Yeah.

18 Q And when -- when you talked to those detectives that
19 day, did you tell them what you knew?

20 A Yes.

21 Q And as truthfully as possible?

22 A Yes.

23 Q And when you told them about what you knew, did you
24 tell them what you recall the defendant saying as
25 best you could?

1 A Yes.

2 Q Was there a point in that interview that you -- that
3 you got a little emotional?

4 A No.

5 Q When you were at Jet Sushi you actually ate, right?

6 A Yes.

7 Q And the defendant ate as well?

8 A Yes.

9 Q And your sister?

10 A Yes.

11 Q Same questions with BW3s, obviously we've seen
12 pictures of the two of you, you and Stephanie,
13 eating. Did the defendant eat also?

14 A Yes.

15 Q And on both those times while you were eating is when
16 he told you and your sister that he had fatally shot
17 the person at Luna?

18 A Yes.

19 ATTORNEY WEITZ: Your Honor, can we
20 approach?

21 THE COURT: You may.

22 (Bench conference.)

23 ATTORNEY MAIER: Your Honor, because I
24 didn't do this before, I'm moving in Exhibit 131 at
25 this time.

1 THE COURT: Any objection?

2 ATTORNEY WEITZ: No.

3 THE COURT: 131 will be received.

4 Q (BY ATTORNEY MAIER) Miss Thao -- and I -- I may have
5 missed this because I was trying to follow along but
6 I was reading ahead also, but when Attorney Weitz was
7 asking you questions about the Facebook messages
8 between you and Chong Lee's account, there was a --
9 an LOL in there. What does LOL mean?

10 A Laugh out loud.

11 Q And that's usually when somebody is joking about
12 something, right?

13 A Right.

14 Q That message was sent to you and you back to it on
15 December 6th of 2013?

16 A Yes.

17 Q I'm not going to ask you to recall exactly what the
18 temperature was, but it's cold in December in
19 Wisconsin, right?

20 A Uh-huh.

21 Q Lots of people joke about leaving Wisconsin on
22 December 6th?

23 A Yes.

24 Q Attorney Weitz asked you if you felt like you could
25 talk with Officer Thao with the police department.

1 Had you ever done that?

2 A No.

3 ATTORNEY MAIER: Just one or maybe two more
4 questions. This is Exhibit 142, Page --

5 ATTORNEY WEITZ: First or second?

6 ATTORNEY MAIER: Second. It will be Lines
7 9 through 11.

8 Q (BY ATTORNEY MAIER) Miss Thao, just a couple more.

9 Okay? This is Exhibit 142, correct?

10 A Yes.

11 Q I'm looking at - I'm sorry, I don't mean to stand
12 over you - Page 8. If you can follow me to Line 9.

13 Sergeant Schira says to you: Okay. So you
14 check your Facebook message and what specifically
15 does Teng say to you. Correct?

16 A Yes.

17 Q And what's your reply?

18 A He just tell me just to not say anything. Just don't
19 testify.

20 Q Thank you, Miss Thao.

21 ATTORNEY MAIER: That's all the questions I
22 have.

23 THE COURT: Any recross?

24 ATTORNEY WEITZ: Just briefly.

25 **EXAMINATION OF MELANIE THAO**

1 **BY ATTORNEY WEITZ:**

2 Q So when Chong said these things to you at the
3 restaurants, again, you didn't believe him, right?

4 A Right.

5 ATTORNEY WEITZ: Nothing further.

6 THE COURT: Members of the jury, any
7 questions you wish to submit for consideration?

8 (Bench conference.)

9 THE COURT: The question is: At the
10 restaurant did it seem as if Chong was bragging about
11 killing the guy or did he seem nervous or scared?

12 THE WITNESS: I don't recall.

13 THE COURT: Does that prompt any additional
14 questions, Mr. Maier?

15 ATTORNEY MAIER: No.

16 THE COURT: Mr. Weitz?

17 ATTORNEY WEITZ: No, Your Honor. Thank
18 you.

19 THE COURT: All right. Very good.

20 Then is this witness excused at this time?

21 ATTORNEY MAIER: Yes, Your Honor.

22 THE COURT: Thank you.

23 ATTORNEY MAIER: Your Honor, I realize you
24 just sat down. Can we approach?

25 THE COURT: You may.

1 (Bench conference.)

2 THE COURT: Mr. Maier, your next witness
3 whenever you're ready then, sir.

4 ATTORNEY MAIER: Your Honor, the State
5 calls Stephanie Thao.

6 THE COURT: Miss Thao, if you would please
7 remain standing, the clerk will swear you in.

8 THE CLERK: Please raise your right hand.

9 (Oath administered to witness.)

10 THE WITNESS: I do.

11 THE CLERK: Please state your full name and
12 spell it for the record please.

13 THE WITNESS: Stephanie Thao,
14 S-T-E-P-H-A-N-I-E, T., and then my last name is
15 T-H-A-O.

16 THE COURT: Okay. Miss Thao, you may be
17 seated.

18 And it's important that everyone be able to hear
19 you, and so to make it a little easier, feel free to
20 adjust the microphone however you need. Okay?

21 THE WITNESS: Okay.

22 THE COURT: Mr. Maier.

23 **EXAMINATION OF STEPHANIE T. THAO**

24 **BY ATTORNEY MAIER:**

25 Q Miss Thao, obviously you weren't here, your sister

1 just got done testifying. You saw her coming out,
2 right?

3 A Yup.

4 Q And you have two other sisters that are older than
5 you?

6 A Yes.

7 Q And a number of brothers as well, correct?

8 A Yes.

9 Q Melanie would be younger than you?

10 A Yes.

11 Q Do you know someone named Chong Lee?

12 A Yes.

13 Q And is he the defendant seated in court today?

14 A Yes.

15 Q How long have you known Chong Lee?

16 A I don't know. I want to say maybe four, five
17 years.

18 Q Okay. And that's from now, correct?

19 A Yes.

20 Q And so you know why you're here to testify today,
21 correct?

22 A Yes.

23 Q Back -- that's an incident that happened at the end
24 of 2013 and some things that happened the beginning
25 of 2014. Fair to say?

1 A Yeah.

2 Q Back then you would have known him for a couple years
3 then?

4 A Yes.

5 Q How would you characterize the defendant, was he a
6 boyfriend, a friend, an acquaintance?

7 A He was a friend.

8 Q And did the two of you talk?

9 A Yes, we did talk.

10 Q I'm sorry. Go ahead.

11 A Yeah, we talked.

12 Q How was it that you talked?

13 A Well, we hang out on the weekends and stuff.

14 Q And so that would be in person?

15 A Pardon?

16 Q That would be in person hanging out?

17 A Well sometimes we text and sometimes we hang out and
18 stuff.

19 Q Okay. Maybe you say text, but that might also
20 include using things like messages on Facebook,
21 right?

22 A Yes.

23 Q Your Facebook account, at least back then, was it
24 anything other than Stephanie Thao?

25 A No.

1 Q Do you recall what his was?

2 A No, I don't.

3 Q But you would know -- never mind. Strike that.

4 In the early part of December of 2013, I'm
5 speaking specifically of Monday, December 9th of
6 2013, was there an arrangement made between you and
7 the defendant to go to Jet Sushi in Appleton?

8 A Yes. We said we were going to meet up there and to
9 eat.

10 Q And what was the plan for how -- who was going to be
11 there and how everyone would get there?

12 A I had to pick up my sister from work and then I told
13 him after I picked up her from work we'll meet him
14 there.

15 Q How late did your sister work?

16 A I believe she worked until six p.m.

17 Q So then you went and picked up your sister?

18 A Yes.

19 Q And was it a long drive or relatively short drive to
20 get to the sushi place from where she worked?

21 A It was a short drive.

22 Q Just the two of you in your car then?

23 A Yes.

24 Q Who's there when you arrive, who ends up eating with
25 you?

1 A Chong.

2 Q Anyone else?

3 A No.

4 Q And this is a fairly small sushi place, correct?

5 A Yes.

6 Q And can you describe really briefly how it was you
7 get food there?

8 A Well, there's like the table is like round and there
9 is little boats that float around with sushi in it
10 and we just grabbed a plate off.

11 Q So you take a plate and then they kind of bill you
12 based on the plate color or something, right?

13 A Yes.

14 Q When you're at the sushi place, are you sitting at a
15 table or someplace else?

16 A We're sitting at the table by the food.

17 Q And how were the three of you arranged?

18 A I was sitting in between Chong and my sister
19 Melanie.

20 Q Do you recall where Melanie was, which side she was
21 on?

22 A I remember she was on my right side.

23 Q And then Chong would have been on your left?

24 A Yup.

25 Q But you're in between them at any rate?

1 A Yes.

2 Q How soon after you walked into the restaurant were
3 the three of you eating then?

4 A I don't remember.

5 Q Okay. Was it real busy in there?

6 A No.

7 Q Fair to say that you could have just sat down and
8 started more or less looking for things that looked
9 good?

10 A Yes.

11 Q Is there a conversation during the time that you're
12 eating sushi that night?

13 A Yes.

14 Q And just so we're clear, you're eating and your
15 sister is eating and Chong -- you're all eating sushi
16 that night?

17 A Yes, we are all eating.

18 Q What if anything did Chong say during the time you're
19 eating?

20 A I don't really remember. I know -- I don't remember
21 how the conversation started but we talked, I think
22 he asked if we heard about the shooting.

23 Q Did he say where the shooting was?

24 A At Luna.

25 Q And that would be Luna Lounge in Appleton?

1 A Yes.

2 Q And that's a place you were familiar with?

3 A Yes.

4 Q And at that point had you heard anything about a
5 shooting at Luna?

6 A I've seen it online, yes.

7 Q What did he say besides asking you if you had heard
8 about a shooting at Luna?

9 A I told him I heard -- I heard about it and then he
10 said he was the one who did it.

11 Q What if any detail did he provide about how this
12 happened, the shooting at Luna?

13 A I don't remember. I remember -- I just remember a
14 little bit that he said that the other guy was gonna
15 swing at his brother and that's when he got mad and
16 that's all I could remember.

17 Q Okay. I'm going to walk you through what you just
18 said because you said some he's and something else in
19 there. You said that he, being Chong, said the other
20 guy was going to do what with --

21 A He was going to swing at his brother.

22 Q At Chong's brother?

23 A Yes.

24 Q Did the defendant say which brother if any it was?

25 A It was Paul I believe.

1 Q Okay. Is that a guess or is that what he said?

2 A I -- that's -- I think that's what he said, yeah.

3 Q Okay. And then you said that he got mad. Is that
4 the defendant saying that he himself was mad?

5 A Yes.

6 Q About this person that's going to take a swing at his
7 brother?

8 A Yes.

9 Q And what did the defendant say he did then?

10 A Shoot him.

11 Q Shot who?

12 A The other person that was going to swing at his
13 brother.

14 Q Did -- did the defendant make any statements to you
15 then at that dinner that he knew who this person was
16 that he shot?

17 A No.

18 Q Did he say where he shot this person?

19 A In the head.

20 Q Did the defendant -- I'm sorry, what did the
21 defendant say about the height of the other person,
22 the person he shot in the head?

23 A He said he was tall.

24 Q Did he say how tall?

25 A No.

1 Q And I guess I don't mean if he said five eight versus
2 he said six eight, but did he give a general
3 statement about how tall the person was?

4 A He just said the guy was really tall.

5 Q Okay. Thank you. How tall are you, Miss Thao?

6 A I think I'm like five feet. I'm short.

7 Q And how -- how tall is the defendant, Chong, compared
8 to you?

9 A I don't know. I think we're about the same height.

10 Q Okay. Within, you know, a couple inches maybe?

11 A Yeah. Maybe he's a little bit taller, but not too
12 much.

13 Q I mean nothing by this, but neither of you would be
14 considered really tall by very many people; is that
15 fair to say?

16 A Yes.

17 Q Okay. What did the defendant say happened after he
18 shot this person in the head at Luna?

19 A I can't remember.

20 Q Did he tell you if he went someplace?

21 A Yeah. I think he -- he said he went to Sharks
22 after.

23 Q And where is Sharks? Let me ask it this way. When
24 he said Sharks, did you know what he meant?

25 A Sharks is the pool hall like, I don't know, I think

1 it's like not too far from Luna.

2 Q Is that someplace that you're somewhat familiar with
3 as well, Sharks?

4 A Yes.

5 Q Just having a hard time describing it right now?

6 A Yeah.

7 Q Okay. What did the defendant say at this dinner at
8 Jet Sushi about a gun if he had shot someone in the
9 head?

10 A I don't remember anything about the gun.

11 Q Did he say anything about what he did with the gun
12 afterwards?

13 A Something with taking it apart.

14 Q So as this is -- this conversation, this is
15 happening, excuse me, while you're eating sitting at
16 the counter?

17 A I don't remember if it happened when we were eating
18 or as we were walking out when we were leaving.

19 Q What's his -- what's his demeanor like? How is he --
20 what does he look like as he's describing this?

21 A I can't remember.

22 Q Would you remember if he was laughing about it?

23 A No.

24 Q So just you --

25 A I just remember him telling it, but then I don't

1 remember him laughing either.

2 Q Not something that he seemed to be joking about, if
3 you recall it that way?

4 A Yeah.

5 Q That's correct?

6 A Yes.

7 Q And your sister is -- I'm sorry. I have one more
8 question and then I apologize for jumping out of
9 order.

10 The person that the defendant indicated he shot
11 in the head while at Luna Lounge, did he say whether
12 this was someone who was white or black or Asian?

13 A I think he said he was white.

14 Q Okay. And it's you and your sister that are there
15 with him when he tells you this?

16 A Yes.

17 Q What -- was there any visible reaction by your sister
18 when he tells you these things?

19 A I don't remember.

20 Q What sort of reaction did you have when you heard him
21 say these things?

22 A Well, the first time I didn't believe him. I thought
23 he was lying. And so that's why we went out the
24 second time, the next day.

25 Q So you say -- you say lying. Is it fair to say more

1 like maybe bragging?

2 A Yes.

3 Q Okay. So then when -- when you're done at Jet Sushi,
4 I think you said he may have been telling you this as
5 you're getting ready to leave --

6 A Yes.

7 Q -- right? Who pays?

8 A Chong paid.

9 Q And do you recall how he paid?

10 A Cash.

11 Q At the time do you know if he had a job?

12 A No. I don't think he did.

13 Q So then the next day -- I'm sorry. Then you get
14 done, you just sort of go your separate ways?

15 A Yes.

16 Q And you and Melanie go where?

17 A We went home.

18 Q Did you talk about this conversation at dinner at all
19 with her that night?

20 A No. On the ride home we just said we think he's
21 lying, that was it.

22 Q Okay. It's not a very good thing to joke about,
23 right?

24 A Yeah.

25 Q Correct?

1 ATTORNEY WEITZ: Your Honor, I'm going to
2 object as to calls for speculation.

3 THE COURT: Sustained. I'll order that it
4 be stricken.

5 Q (BY ATTORNEY MAIER) Would you joke about killing
6 someone?

7 A No.

8 ATTORNEY WEITZ: Your Honor, I'm going to
9 object as to the relevancy.

10 THE COURT: Overruled.

11 Q (BY ATTORNEY MAIER) You said no?

12 A Yes.

13 Q All right. Thank you.

14 The next day did you and the defendant have some
15 sort of communication about going out to eat again?

16 A Yes, because we planned the night before when we were
17 at Jet Sushi that we were going to go eat Buffalo
18 Wild Wings.

19 Q Okay. And in fact you sent him a Facebook message
20 saying are you still planning on going to B-Dubs,
21 right?

22 A I don't remember. I might have though.

23 Q Okay. And you may not have called it B-Dubs, might
24 have called it something else. At any rate, the two
25 of you communicate about sort of the same situation,

1 right, you're going to pick your sister up after
2 she's done with work and then meet at BW3s?

3 A Yes.

4 Q And which -- did that happen?

5 A Pardon?

6 Q Did you actually pick your sister up and go there?

7 A Yes.

8 Q And the defendant met you there?

9 A Yes.

10 Q Which BW3s was it that you went to?

11 A It was the one on Calumet.

12 Q Yeah. On the south side of Appleton?

13 A Yeah.

14 Q If you're able to say, what are some other things
15 that are around there?

16 A I don't know.

17 Q Okay. Maybe a couple other restaurants?

18 A I don't know.

19 Q Okay. At the time were you living on the south side
20 of Appleton?

21 A No.

22 Q You don't have to say what your address was, but sort
23 of were you a north side, east side, west side, south
24 side of Appleton person?

25 A West side.

1 Q Okay. If I said that restaurant was in an area
2 people call Darboy, does that mean something to you?

3 A Which one, Buffalo Wild Wings?

4 Q Yes.

5 A Yes.

6 Q And that sushi place would also be in that same kind
7 of general area, right?

8 A Yeah.

9 Q So you go to BW3s. Who else is there besides your
10 sister, you and the defendant?

11 A There was just us three.

12 Q And do you recall if you -- where you sat in that
13 restaurant?

14 A No.

15 Q And the three of you then ate?

16 A Yes.

17 Q During the time that you're eating, did Chong take
18 his phone out?

19 A I'm pretty sure he did. I think we all had our
20 phones out.

21 Q Maybe just as the sort of normal, I'll say,
22 millennial's activities to have the phone out and
23 near your face whatever you're doing?

24 A Yes.

25 Q Later on did you find that he had taken pictures of

1 you?

2 A Yes.

3 Q Were you aware that the defendant had taken pictures
4 of you?

5 A Yes.

6 Q I guess I mean during dinnertime.

7 A Yeah. I think we -- I think we took a picture
8 together, too. I don't remember, but I think we
9 did.

10 Q Okay. And did you see that picture or those pictures
11 later on?

12 A Yes.

13 Q Where did you see them?

14 A Facebook.

15 Q Okay. During the -- the dinner at Buffalo Wild
16 Wings, did the defendant say anything to you and your
17 sister about the shooting at Luna?

18 A Yes, he did.

19 Q What did he say during that dinner?

20 A He pretty much just said the same thing he said the
21 night before.

22 Q Now, I'm not going to ask you why he's -- why he said
23 it, and I guess what I mean by that is was it in
24 response to any prompting from either you or your
25 sister.

1 A Can you rephrase that?

2 Q Sure. Who -- between you and your sister, who asked
3 him to talk about Luna when you were at BW3s?

4 A I don't think anyone asked him to talk about it.

5 Q So he just talked about it himself?

6 A Yeah.

7 Q And then you indicated that he went through and said
8 more or less the same thing he had said the night
9 before?

10 A Yes.

11 Q What was your reaction to him saying it a second
12 night?

13 A Well, I still thought he was lying until he got a
14 phone call and then it seemed pretty serious so --

15 Q During the time you're eating?

16 A Yeah.

17 Q Was that with the same phone he had taken a
18 picture?

19 A I believe so.

20 Q Okay.

21 A Yeah.

22 Q Were there any extra details that he provided when
23 you were at BW3s about having been in an incident or
24 seeing an incident at Luna that led to him shooting
25 somebody in the head and killing them?

1 A No.

2 Q When -- when he was telling you about this, is this
3 before the phone call he made?

4 A Pardon?

5 Q He tells you about what happens at Luna and then he
6 gets the phone call?

7 A Yes.

8 Q What's the topic of conversation after the phone
9 call?

10 A After -- I don't remember.

11 Q Was it still about Luna or something else?

12 A No. I don't think it was about it because I remember
13 I told him that -- not to talk about it because I
14 didn't want to talk about it right here.

15 Q What was his demeanor like, if you recall, while he
16 was telling you about this at B-Dubs?

17 A I don't remember.

18 Q Okay. Nothing that was obvious in any direction?

19 A No.

20 Q Did his demeanor change at all after he took the
21 phone call?

22 A No.

23 Q All right. Miss Thao, are you aware of the defendant
24 telling anyone else that he had shot and killed this
25 person at Luna Lounge?

1 A No.

2 Q Just you and your sister?

3 A Yes.

4 Q I guess let me just ask this to make sure that things
5 are clear. Both of you, you and your sister, are
6 seated at the table or booth or whatever the entire
7 time he's talking about this?

8 A Yes.

9 Q And also at the sushi place, you're sort of
10 bookending him the entire time he's talking -- I'm
11 sorry, you're splitting them up the entire time that
12 he's talking?

13 A Yes.

14 Q Miss Thao, you -- that was on the Tuesday then,
15 December 10th; is that fair to say?

16 A Yes.

17 Q And that would have been the first part of the week
18 that immediately followed the fatal shooting at Luna.

19 A Yes.

20 Q So it's only a couple days after this happened --

21 A Yeah.

22 Q -- that Chong tells you that he shot and killed this
23 person.

24 A Yes.

25 Q About two weeks later on January 21st of 2014, I'm

1 sorry, about a month later, my mind's not working,
2 you spoke with a couple of police officers from the
3 Appleton Police Department, correct?

4 A Yes.

5 Q And I'm not expecting you to remember their names,
6 but can you describe even a little bit what they
7 looked like?

8 A No. I don't remember how they looked like.

9 Q But they're white, black, Asian?

10 A White.

11 Q Young, old?

12 A I mean they weren't that old or that young, in
13 between.

14 Q Middle aged?

15 A Yeah.

16 Q All right. Miss Thao, I'm going to show you what has
17 been marked as Exhibit 146. Do you see the sticker?

18 A Yup.

19 Q Now, when you spoke with the detectives on January
20 21st of 2014, you realize that you were being
21 recorded, correct?

22 A Yes.

23 Q And do you think that looking at a transcript of that
24 recorded conversation might help you refresh your
25 recollection about what you said the defendant's

1 demeanor was like when he told you about what had
2 happened at Luna Lounge in December? Do you think it
3 would help?

4 A No. I -- I don't remember.

5 Q You said no and you don't remember?

6 A No.

7 Q Okay. So you don't recall Sergeant Schira, who would
8 be one of these detectives, saying -- and I'll just
9 -- I'll refer you to Page 6. How was his -- how was
10 his like demeanor. I mean, did he -- did he seem
11 like he was sorry that he did it, that he was like
12 ashamed that he did it, that he was -- was he scared
13 the police were looking for him. You don't recall
14 him asking you that?

15 A No, it's been too long. I don't remember.

16 Q So you don't recall what your answer was to that
17 question then?

18 A No.

19 Q Okay. You don't recall saying he seemed scared?

20 A No, I don't remember.

21 Q And then -- but then, like I said, like when he told
22 me about it, he seemed like he was scared but I was
23 kind of like not really believing him. You don't
24 recall saying that?

25 A No, I don't remember.

1 Q You do not remember?

2 A Yeah. I don't.

3 Q Okay. I'm going to show you again -- or not again,
4 I'll show you what's been marked as Exhibit 147.

5 Again, you see the exhibit sticker, correct?

6 A Yes.

7 Q This would be a transcript of a second interview.
8 You spoke with the police then about three weeks
9 later, correct?

10 A Yes.

11 Q And it would have been the same detectives as the
12 first time?

13 A Probably.

14 Q Okay. And again, you knew you were being recorded?

15 A Yes.

16 Q Do you think that looking at that transcript might
17 help you recall what your answer was to the
18 detectives when they asked you what the defendant's
19 demeanor was like when he told you that he had shot
20 and killed someone at Luna Lounge?

21 A I don't remember. It's been too long.

22 Q Okay. This is Page 22, actually, I'm sorry, at the
23 bottom, Lines 22 and 23, and the person identified is
24 Tauber, which is Sergeant Dan Tauber, says: Maybe
25 fear but did you see remorse? Did you -- he feel bad

1 about what he did? Your response was what, Miss
2 Thao? Could you read that out loud please?

3 A Well, a little bit but he seemed more like he was
4 scared.

5 Q Thank you. When you're talking with the police those
6 two days, did you try to tell them what you remember
7 to the best of your ability?

8 A Yes.

9 Q And try to tell them truthfully without exaggerating
10 or bragging or anything like that?

11 A Yes.

12 Q Stephanie, who is Teng Lee?

13 A He is a friend.

14 Q How long have you known him?

15 A I don't know, years, like.

16 Q Quite a while?

17 A Yeah.

18 Q He has a brother named Phong, correct?

19 A Yes.

20 Q At some point when you talk about how you and Chong
21 would hang out on weekends, was Teng ever there?

22 A Sometimes.

23 Q But it wouldn't be -- so it wouldn't be a shock to
24 see him in the group of people who were hanging out
25 on the weekend.

1 A Yes.

2 Q Did you see him, Teng, interacting with the defendant
3 at all on weekends?

4 A No.

5 Q They -- they would be in the same group but avoid
6 each other?

7 A Well, I don't know, like when we all hang out,
8 everyone's scattered all over, and I don't -- like
9 they talk.

10 Q You think they --

11 A But they do talk but I don't.

12 Q So it might be in a -- if I'm wrong about this,
13 please tell me, I just want to see if I'm reading you
14 right. If you go to a bar that has music, some
15 people might go dance, some people might be sitting
16 in one area drinking and having fun, another might be
17 in another area, somebody might be outside smoking,
18 is that sort of what we're getting?

19 A Yes.

20 Q At some point then at the end of January of 2014, did
21 you and your sister have a conversation about
22 something she had received from Teng?

23 A She -- I came home from work and she just told me
24 about the message.

25 Q Okay. What message?

1 A That Teng had sent her on Facebook.

2 Q What did the message say?

3 A I don't know. I didn't see the message.

4 Q What did Melanie say the message said?

5 A She said it said to not testify.

6 Q Did she say anything about not talking or anything as

7 well?

8 A I don't remember.

9 Q So let me ask you this. You and your sister are

10 fairly close, right?

11 A Yes.

12 Q You share a room?

13 A Yes.

14 Q And I guess we didn't ask her this, but how old are

15 the two of you?

16 A I'm 24 and she's 23.

17 Q And at the end of 2013 into 2014 you guys would have

18 been two years younger?

19 A Yes.

20 Q Okay. Within your group of friends or people that

21 you hang out with, if someone sent a message on

22 Facebook to one of you, would it be sort of

23 understood the other would have known about it?

24 A Yes.

25 Q When -- when the defendant told you about having shot

1 and killed a person at Luna Lounge, did he say
2 anything about having told anyone else?

3 A I don't remember.

4 Q You didn't, when you heard this, do anything like
5 call the police, correct?

6 A Yes. I didn't.

7 Q Why is that?

8 A Because I thought he was lying.

9 Q Is that something that you wanted to get involved
10 in --

11 A No.

12 Q -- even if it was true?

13 In -- a couple days after the dinner at BW3s did
14 you find out that the defendant had been arrested?

15 A Yes.

16 Q And after he was arrested, did you receive phone
17 calls from him?

18 A I did.

19 Q And he'd have been calling you from the Outagamie
20 County Jail, right?

21 A Yes.

22 Q When he -- and he also wrote you a letter, you
23 received a letter from Chong as well about -- after
24 he was arrested, correct?

25 A Yes.

1 Q How did that letter arrive? Stephanie, I'm sorry,
2 it's a bad way to ask it, and I'm not trying to trick
3 you. It came in an envelope in the mail, right?

4 A Yes.

5 Q Who -- who was the envelope addressed to?

6 A I don't remember.

7 Q Okay. Is that a letter that you read?

8 A Yes.

9 Q Inside the envelope was there anything else besides
10 the letter to you?

11 A No.

12 Q There was not a letter to your sister as well?

13 A Oh, I think there was, yeah.

14 Q Okay. And your recollection maybe is that there were
15 two letters in there now?

16 A Maybe. I can't remember.

17 Q Okay. Miss Thao, showing you what has been marked
18 Exhibit 92. Can you take a look at that? And it's
19 -- actually, I'm sorry, take it back just for a
20 second. Exhibit 92 is four total pages long,
21 correct?

22 A Yes.

23 Q The top sheet there, can you describe what that
24 appears to be?

25 A Yeah. Looks like an envelope from Chong's letter.

1 Q Like a photocopy of an envelope?

2 A Yes.

3 Q And you said from Chong?

4 A Yes.

5 Q Would that be a copy or a scanned copy of the
6 envelope that contained the letter to you and your
7 sister from the defendant?

8 A Probably. I don't remember.

9 Q Did you receive more than one envelope from him while
10 he was in jail?

11 A No, I don't think so.

12 Q Okay. That's fine. Second page is maybe the back of
13 the envelope, fair to say?

14 A Yes.

15 Q And then I'll have you look, we're going to go kind
16 of third and fourth page for just a little bit.

17 The top of the third page that's in that packet
18 that's Exhibit 92, it starts with in the upper left a
19 name being stated, correct?

20 A Yes.

21 Q And what name is stated?

22 A Steph.

23 Q And that would be short for?

24 A Stephanie.

25 Q Who is you, right?

1 A Yes.

2 Q Now, there are some parts of this that are
3 highlighted, but looking at it, just looking at Page
4 3, and feel free to look at the letter itself, are
5 you able to say who the author of the letter was?

6 A Yes.

7 Q Who?

8 A Chong.

9 Q Chong Lee?

10 A Yes.

11 Q All right. Now, the -- about maybe a quarter of the
12 way down there is a highlighted section that's a
13 little bit over a line. Could you read what that
14 says please? And it's -- I realize there is a bad
15 word in there, you can say it.

16 A Fucking Paul and Joe. I can't believe they do this
17 to me.

18 Q All right. And then the very bottom of the page,
19 another line-and-a-half, could you read that as well
20 please?

21 A I fucking hate Paul and Joe for that. Those two
22 bitch mofo's.

23 Q Mofo is short for a longer bad word, right?

24 A I don't know.

25 Q Oh, okay. Apparently I do. Hang around too many

1 people who swear.

2 And then on the top of the fourth page, I'm
3 going to have to hold this for you too because of the
4 way it's folded, could you read just the highlighted
5 portion please?

6 A Fucking punks more like it. I'm pretty sure I'll
7 beat this case though.

8 Q Okay. And then there's some -- there's two lines,
9 actually there's sort of three lines, right, that are
10 -- that are not written in English, right?

11 A Yes.

12 Q What language is that written in?

13 A Hmong.

14 Q And in between the second and third lines as you go
15 down there is what looks like a signature, right?

16 A Yes.

17 Q And are you able to tell whose signature that is?

18 A Chong's.

19 Q Chong Lee?

20 A Yes.

21 ATTORNEY MAIER: Thank you, Stephanie.

22 At this point I'd move in Exhibit 92.

23 THE COURT: Any objection?

24 ATTORNEY WEITZ: No.

25 THE COURT: 92 will be received.

1 Q (BY ATTORNEY MAIER) All right. Stephanie, I think
2 you indicated that you did receive some calls from
3 the defendant while he was in the jail, right?

4 A Yes.

5 ATTORNEY VISHNY: Judge, is it all right to
6 take my jacket off?

7 THE COURT: Sure.

8 ATTORNEY VISHNY: It's very warm in here.

9 Q (BY ATTORNEY MAIER) Miss Thao, I'm going to show
10 you, sorry, what's been marked Exhibit 136. Do you
11 see that?

12 A Yes.

13 Q Now, before we get to that, the calls -- excuse me,
14 when the defendant called you from the jail, do you
15 recall what language you spoke more -- if you spoke
16 one language more than the other?

17 A I don't remember.

18 Q You don't recall?

19 A No.

20 Q Would you have -- is it true that you spoke in Hmong
21 with the defendant when he was calling from the
22 jail?

23 A We -- yeah, we did spoke in --

24 Q Both of you are relatively fluent in Hmong?

25 A Yes.

1 Q Also fluent in English?

2 A Yes.

3 Q So it's possible that you were sometimes in Hmong,
4 sometimes in English?

5 A Yes.

6 Q And maybe you don't even realize that you're
7 switching back and forth?

8 A Yes.

9 Q Okay. Now you know that -- I'm sorry. You know that
10 these calls were recorded, right?

11 A Yes.

12 Q In fact, there is kind of an annoying notification
13 every time somebody calls that says this call is
14 subject to monitoring or recording, right?

15 A Yes.

16 Q So if you take a look at Exhibit 136, and feel free
17 to take just kind of a quick look at the top of it,
18 fair to say that that is a transcript of a call from
19 Chong to you from the jail?

20 A Yes.

21 Q And there's a date near the top. Can you tell the
22 jury what the date and time are please?

23 A 1/4/14, 17:01?

24 Q And it says 17:01. That's 5:01 p.m. Do you know how
25 that works?

1 A Yes.

2 Q Okay. If I could -- do you recall any of the
3 contents of that call without taking a look at the
4 transcript?

5 A No. I don't remember.

6 Q All right. The -- the top of this, it says call to,
7 correct, and then there's a number listed?

8 A Yes.

9 Q What's the number that's listed?

10 A You want me to --

11 Q Starts with 920, right?

12 A Yes.

13 Q And then what's the rest of the number?

14 A 378-8315.

15 Q Now, at the time, is that a number that has some
16 meaning to you?

17 A Yeah. That's my old number.

18 Q Your old number?

19 A Yes.

20 Q And is that a cell or a landline?

21 A Cell.

22 Q So this is a call at that -- on that date at that
23 time to your cell number.

24 A Yes.

25 Q From the jail?

1 A Yes.

2 Q And that's a call that you took from Chong Lee,
3 correct?

4 A Yes.

5 Q Now, again, looking at it without really looking at
6 it, do you recall any particular details of the call
7 from January 4th of '14?

8 A No.

9 Q Okay. Any reason to believe the transcript is wrong
10 based on the recording? No?

11 A No.

12 Q I would ask you to turn -- now, in the header there
13 is pages, but I'd ask you to turn to Page 7 now.
14 You'll see about maybe three quarters of the way down
15 there is a little bit of a gap, right?

16 A Yes.

17 Q Now you and I are just going to talk about what's on
18 the bottom of the page from there. Fair enough?

19 A Yes.

20 Q Okay. Now, if I tell you that the C on there is
21 Chong and the S is Stephanie, does that make sense?

22 A Yes.

23 Q And you can see how this is an exchange of statements
24 between Chong and Stephanie on this recorded jail
25 phone call. Right?

1 A Yes.

2 Q So, for example, Chong says: And if my little
3 brother past (sic) through to you, you have to scorn
4 him because you -- he put me in here. Do you see
5 that?

6 A Yes.

7 Q You don't recall that at all being said?

8 A No.

9 Q But again, it's in the transcript, right?

10 A Yes.

11 Q What was your response?

12 A I have not -- I had talked to him and he said he had
13 not said anything.

14 Q And then Chong says: That liar, I gave the documents
15 to this jerk and still talked to you. I just want to
16 beat him up. Do you see that?

17 A Yes.

18 Q What's your response? What's the next line down?

19 A You know.

20 Q Okay. And then turning to Page 8. Thank you.

21 ATTORNEY SCHNEIDER: Andy, look at the
22 bottom of 7, I think you need to correct it for the
23 record.

24 ATTORNEY MAIER: I'm sorry. There is a
25 typo on there. Turn back to Page 7. And for the

1 record --

2 ATTORNEY SCHNEIDER: Andy, one second
3 please.

4 Q (BY ATTORNEY MAIER) That "you know" on the bottom.
5 I made a mistake then. The bottom of that is
6 actually Chong saying you know, correct?

7 A Correct.

8 Q And then the top of Page 8 your response is?

9 A Yeah.

10 Q And then Chong says: Him and Joe, they both were
11 arrogant and thought they were the strongest,
12 something, said that. And you replied?

13 A Yeah, I know.

14 Q And he said: They both. And then you said what?

15 A I know that Paul is acting strong but I know that
16 after that happened he too was not even strong.

17 Q And then Chong said: He called, you talked to me
18 again, I talked to you there at B-Dubs. Correct?

19 A Yeah.

20 Q And your response is?

21 A Yeah.

22 Q And Chong said: When we were eating sushi. And you
23 said?

24 A Yeah.

25 Q And then Chong said: Okay. You know, Joe lied to me

1 that he didn't say anything about me, but the police
2 said Joe and Paul were talking about me. And you
3 replied?

4 A Yeah.

5 Q And then Chong said: Joe said that he saw me give
6 him, inaudible, used his own hands. And you said?

7 A Yeah. I read the article already.

8 Q Chong then said: What? There was an article about
9 it? And you replied?

10 A Yes. Say what Paul and Joe both said.

11 Q And Chong said: Oh, where did you read that.

12 A I saw Lisa posted it.

13 Q Chong said: Who did you see post up?

14 A Lisa.

15 Q Chong says: Lisa posted it up?

16 A Yeah.

17 Q Oh -- Chong says: Oh, yeah, yeah. You say?

18 A Yeah.

19 Q Chong says: They were so mean. Right?

20 A Yeah.

21 Q Chong says: I didn't do it. You replied?

22 A That was why I saw and I messaged Paul. I asked
23 Paul. Paul's like he didn't do anything. Inaudible,
24 you think I would do that to my brother. And I said
25 I don't know.

1 Q And then Chong said: What a liar. Oh, I hate those
2 two so much. Those two inaudible.

3 Okay. Thank you.

4 Miss Thao, in that little exchange between you
5 and the defendant -- do you know who that Lisa is?

6 A Yes.

7 Q Who is that?

8 A Lisa is Chong's brother's girlfriend.

9 Q Which brother of Chong's?

10 A Hu.

11 Q Hu's girlfriend Lisa?

12 A Yes.

13 Q Do you know what her last name is?

14 A No.

15 Q If I said it would you recognize it?

16 A Maybe.

17 Q Stutzman?

18 A Yup.

19 Q That's it?

20 A Yeah.

21 Q Thank you.

22 Now, we're still on the same exhibit and I'd ask
23 you to turn to Page 10, and can you see a section
24 here from near the top to about two thirds of the way
25 down, right? Correct?

1 A Yes.

2 Q And it's structured the same way as the other one
3 that we just went through, right?

4 A Yes.

5 Q So the transcript reads then, from Chong: That gay
6 jerk, he's so mean to me, he and Paul. And you
7 say?

8 A Yeah.

9 Q And then Chong says: Uh-huh. I told you that they
10 didn't know anything but you see.

11 A Yeah.

12 Q Chong says: Like they didn't know anything and then
13 suddenly he and Paul said it was me then I kicked the
14 door and then I took Teddy and, inaudible, so far
15 away. And you say?

16 A Really.

17 Q And then Chong says: Yeah, and I was like, what the
18 fuck, and then I woke up and I was (inaudible).

19 A Yeah. I knew that someone was -- has to say that.

20 Q Chong says: I figured that it was that white person.
21 You know?

22 A Oh, yeah.

23 Q And then Chong says: But it was them and it turned
24 out to be my two guys.

25 A I know.

1 Q And Chong says: And even turned out to be -- excuse
2 me, and even turned out to be my younger brother, my
3 very close brother.

4 A Yeah.

5 Q So heart breaking, so heart breaking (inaudible).
6 That's what that transcript says, correct?

7 A Yes.

8 Q And again, you have no recollection of that call or
9 the contents of it?

10 A No.

11 Q In the middle of that, Chong says: I figured that it
12 was that white person, you know.

13 And you say: Oh, yeah.

14 Who do you think -- who did you interpret that
15 to mean?

16 A I don't know.

17 Q Okay. Miss Thao, I'm going to show you what's been
18 marked as Exhibit 137. You see the exhibit sticker
19 there?

20 A Yes.

21 Q Looking at the format, can you see the heading
22 indicates it's a jail phone call, correct?

23 A Yes.

24 Q And what's the date and time of this call?

25 A 1/8/14, 18:06.

1 Q And that would be 6:06 p.m.?

2 A Yes.

3 Q And it says call to and it has a number, correct?

4 A Yes.

5 Q What's the number that's listed there?

6 A 920-378-8315.

7 Q And that's the same number as the last call?

8 A Yes.

9 Q And that's also your old cell phone?

10 A Yes.

11 Q This is a call from Chong Lee to you, right?

12 A Yes.

13 ATTORNEY WEITZ: Is this Exhibit 137 that
14 you're referencing?

15 ATTORNEY MAIER: Yes.

16 Q (BY ATTORNEY MAIER) And I would ask you to turn to
17 Page 5. And we're going to start actually with this
18 -- the last part of this box. Okay?

19 Now, in this one ST is Stephanie Thao, CL is
20 Chong Lee. Okay?

21 A Okay.

22 Q And we'll try to do it again -- just ask, you don't
23 have any independent recollection of this phone call?

24 A No.

25 Q All right. So it starts with this ST, and what do

1 you say there?

2 A Oh, yeah. Me and Mel -- me and Mel went to B-Dubs
3 yesterday.

4 Q Chong says: What?

5 A Me and Mel went to B-Dubs yesterday.

6 Q Chong says: You and Mel went to BWs. Oh, yeah.
7 Tuesday.

8 A Yes. That was yesterday.

9 Q Chong says: Don't remind me, dog.

10 A Yeah. Because the last time that we went, the last
11 time we went, yeah, the last time we went was with
12 you.

13 Q Chong says: I know. That's so sad.

14 And then please turn to Page 13. On this page
15 we're going to start, there is sort of two boxes with
16 text in them, right?

17 A Yes.

18 Q We're going to start with the top, and we're actually
19 just going to read through the bottom of the second
20 one. Okay?

21 A Okay.

22 Q And then this is a call and concept that you don't
23 have any recollection of, we're just relying on a
24 transcript of a recording, right?

25 A Yes.

1 Q Chong says: Inaudible I don't know. They're mean.

2 I hate them too much. I inaudible.

3 A Why do you hate Phong.

4 Q What?

5 A Why do you hate them.

6 Q And Chong says: I said that I love Phong but I hate

7 Joe and Paul?

8 A You love Paul.

9 Q Chong says: Huh? I love Phong but I really hate Joe

10 and Paul.

11 A Oh, you love -- love Phong.

12 Q Chong says: Yeah, I love Phong but I hate Joe and

13 Paul.

14 Now we turn to Page 14, right?

15 A Yes.

16 Q And starting in this box of texts you can see the

17 spot where it says Stephanie, correct?

18 A Yes.

19 Q Right near where my finger is?

20 A Yes.

21 Q And we're going to read from there through there.

22 Okay?

23 A Okay.

24 Q So it starts with you saying what?

25 A I think someone deactivated your Facebook today. I

1 don't see Joe's post.

2 Q Chong says: Oh, yeah. He loves me a lot.

3 A He writes on your wall every day. You know he writes
4 on your wall every day that he misses you. Inaudible
5 Joe really does love you too.

6 Q And then Chong says: Loves me, yes, more like kill
7 me. Like I was telling him and Paul inaudible I can
8 just use my gun and shoot, bang, and kill you two,
9 you know.

10 A Yeah.

11 Q Chong says: Those two. It's so heart breaking. I
12 don't even want to talk about them.

13 A Just don't talk then.

14 Q I'm sorry. You got to stop. Sorry about that.

15 THE COURT: Can I get counsel to approach
16 just for a second?

17 (Bench conference.)

18 THE COURT: Ladies and gentlemen, I wanted
19 to check with counsel, see where we're at. We've
20 been going fairly hard this afternoon, and so what I
21 think makes most logical sense is we'll break right
22 now, you all be relieved for the evening, I would
23 like you back at 9:15. I'll anticipate that we'll
24 start promptly at 9:15 and then we'll continue with
25 the examination at that time. Okay.

1 All rise, please.

2 (The jury was escorted out of the
3 courtroom.)

4 THE COURT: Please be seated. And we did
5 have -- let's see, we had several side bars during
6 the afternoon session.

7 First one related to a hearsay objection made by
8 defense, State asks for some latitude, it was
9 conditionally permitted based upon further
10 anticipated testimony.

11 There was a subsequent sidebar related to line
12 -- the objection was made on hearsay and character
13 grounds. The court felt it was okay on hearsay -- on
14 character grounds, agreed that it constituted
15 hearsay. Counsel agreed to remedy the issue by
16 rephrasing. Court found that acceptable.

17 There was a subsequent sidebar related to
18 referencing the account versus specifically Chong
19 Lee, it was remedied by reference to the account.

20 Finally, there was a sidebar related to spending
21 too much on redirect of substances covered during the
22 original direct examination. Prosecution agreed to
23 -- to move on.

24 That by and large addresses the sidebars that we
25 needed to address.

1 Miss Thao, you will be released for the evening.

2 I would ask that you not discuss with anyone any of
3 your testimony for today. We will re -- we will --
4 I'll ask you to be here at a little after nine a.m.,
5 we'll commence our questioning at 9:15. Okay?

6 THE WITNESS: Okay.

7 THE COURT: Is there anything else -- I
8 anticipate or I expect that what I would do is we'll
9 have the same protocol, I'll be here at 8:30 to
10 discuss with counsel any issues that we need to
11 address beforehand.

12 Anything else, Attorney Schneider, for the
13 evening?

14 ATTORNEY SCHNEIDER: Not that I can think
15 of.

16 ATTORNEY WEITZ: Your Honor, just one
17 thing, I may have missed it, but when you were
18 discussing the sidebars I think there was one hearsay
19 objection that was overruled on conditional --

20 THE COURT: Yes. I did address that. You
21 are -- you're absolutely correct though.

22 ATTORNEY WEITZ: Thank you.

23 THE COURT: All right. Then if there is
24 nothing further, then we will be in recess. I will
25 see everyone tomorrow at 8:30.

1 We are adjourned.

2 (Proceedings concluded.)

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C E R T I F I C A T E

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5 STATE OF WISCONSIN)
) ss.:
6 COUNTY OF OUTAGAMIE)

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9 I, JOAN BIESE, RMR/CRR, do hereby certify that I
am the official court reporter for Branch IV of the
10 Circuit Court of Outagamie County;

11 That as such court reporter, I made full and
correct stenographic notes of the foregoing proceedings;

12 That the same was later reduced to typewritten
13 form:

14 And that the foregoing proceedings is a full and
correct transcript of my stenographic notes so taken.

16 Dated this 6th day of August, 2016.

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JOAN BIESE, RMR/CRR